TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 823.

FARMERS AND MERCHANTS BANK OF MONROE, NORTH CAROLINA, *ET AL.*, PETITIONERS,

vs.

FEDERAL RESERVE BANK OF RICHMOND, VIRGINIA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

PETITION FOR CERTIORARI FILED JANUARY 31, 1923.

CERTIORARI AND RETURN FILED MARCH 23, 1923.

(29,378)

(29,373)

SUPREME COURT OF THE UNITED STATES.

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INDEX.

Judd & Detweiler (Inc.), Printers, Washington, D. C., April 5, 1923.

No.----   THIRTEENTH DISTRICT.

FARMERS & MERCHANTS BANK, et al

against

FEDERAL RESERVE BANK.

(FROM UNION)

Before Harding, J. Defendant Appealed.

North Carolina—Union County.
Supreme Court.

Be it remembered, that on the 9th day of February, 1921, the plaintiffs sued and prosecuted out of the Superior Court, of Union County, a Summons in words and figures following:

SUMMONS FOR RELIEF.

North Carolina—Union County.
In the Superior Court.

Farmers & Merchants Bank, Monroe; Bank of Hoke, Raeford; Page Trust Co., Aberdeen; Banking Loan & Trust Co., Sanford; Page Trust Co., Carthage; Page Trust Co., Hamlet; Bank of Pinehurst; Merchants & Farmers Bank, Aberdeen; Farmers Bank, Rockingham; Bank of China Grove, China Grove; Bank of Hamlet, Hamlet; Bank of Broadway, Broadway; and such other Banks organized under the laws of the State of North Carolina as have or may become party plaintiffs to the above suit

against

The Federal Reserve Bank of Richmond.

Union County—In the Superior Court.

To the sheriff of Richmond County—Greeting:

You are hereby commanded to summon The Federal Reserve Bank of Richmond the defendant above named, if it be found within your county, to appear at the office of the Clerk of the Superior Court for the County of Union, on the 1st day of March, 1921, and answer the complaint, which will be filed in the office of the Clerk of the Superior Court of said county within the time prescribed by law; and let it take notice, that if it fail to answer or demur to the said complaint within 20 days after return day of said summons, the plaintiffs will apply to the court for the relief demanded in the complaint.

Herein fail not, and of this summons make due return.

Given under my hand, this 9th day of February, 1921.

R. W. LEMMOND,
Clerk Superior Court Union County.

On the foot of the foregoing summons is the following entry of service:

Received Feb. 10th, 1921; served Fed. 10th, 1921, served the foregoing summons on Federal Reserve Bank of Richmond by reading same and delivering copy thereof to W. H. Wheelwright, the agent or collector of said Bank authorized to collect moneys therefor.

Feb. 10th, 1921.

R. L. McDONALD,
Sheriff of Richmond County.

On the same day to it, Feb. 9th, 1921, the plaintiffs filed their complaint, which is as follows:

COMPLAINT.

North Carolina—Union County.
In the Superior Court.

(Title of Cause.)

The plaintiffs complaining of the defendant, allege:

1. That the plaintiffs, the Farmers and Merchants Bank of Monroe, N. C., the Bank of Hoke, of Raeford, N. C., Page Trust Company of Aberdeen, N. C., the Banking Loan & Trust Company of Sanford, N. C., the Page Trust Co., of Carthage, N. C., the Page Trust Co., of Hamlet, N. C., the Bank of Sanford, of Sanford, N. C., the Bank of Pinehurst, Pinehurst, N. C., Merchants & Farmers Bank of Aberdeen, N. C., the Bank of China Grove, China Grove, N. C., the Bank of Hamlet, of Hamlet, N. C., and the Bank of Broadway, of Broadway, N. C., are and were at the times hereinafter mentioned, corporations duly created, organized and existing under and by virtue of the laws of the State of North Carolina, having their offices and principal places of business within the State of North Carolina, and at the towns and cities named after the name of each bank, respectively, the Farmers and Merchants Bank of Monroe, N. C. having its office and principal place of business within the County of Union.

2. That the plaintiffs herein are not members of the Federal Reserve Banking system, and they bring this action in behalf of themselves and all other state banks within the State of North Carolina, who are not members of the Federal Reserve Banking system, and who shall come in and make themselves parties hereto.

3. That the Federal Reserve Bank of Richmond, is a corporation duly created, and existing under and by virtue of the Acts of Congress, with full power to sue and be sued, complain and defend in any court of law or equity.

4. That on or about the 5th day of February, 1921, there was duly enacted and ratified by the General Assembly of North Carolina a law authorizing all banks and trust companies within the State to charge a fee, not in excess of one-eighth of one per cent, on remittances covering checks, the minimum fee on any, remittance therefor to be ten cents, and providing that all checks drawn on banks and trust companies chartered by the State shall, unless specified on the face thereof to the con-

trary by the maker or makers thereof, be payable at the option of the drawee bank in exchange drawn on the reserve deposits of said drawee bank when any such check is presented by or through any Federal Reserve Bank, Post Office, or Express Company, or any respective agents thereof, an exact copy of said law being hereto attached marked "Exhibit A" and by reference made a part of this paragraph.

5. That plaintiffs are advised and believe that the provisions of said law enter into and become a part of the contract between the drawee bank and its depositor and the holder of any check drawn since the fifth day of February, 1921; and that in the case of all checks drawn on any bank or trust company, chartered by the State of North Carolina, drawn since the said fifth day of February, 1921, on the face of which the drawer, or drawers, have not specified to the contrary, there is a contract implied by law, that if said checks are presented by any Federal Reserve bank, post office, express company, or any respective agents thereof, same shall be payable at the option of the drawee bank in exchange drawn on its reserve deposits; and that the Federal Reserve Bank of Richmond by accepting any such checks, assents to the provision of said law and agrees to accept exchange drawn on the reserve deposits of said banks as aforesaid in payment thereof.

6. That the plaintiffs propose to avail themselves of the provisions of the aforesaid law and to charge the fee on remittances covering checks as provided in section one thereof, and to make payment in exchange drawn on their reserve deposits, when any checks drawn on them are presented by or through any Federal Reserve bank, post office, or express company, or any respective agents thereof as provided in section two thereof.

7. That the defendant, the Federal Reserve Bank of Richmond, is attempting to force plaintiff and all other banks of North Carolina to make remittances in payment of checks, free of charge, in defiance of the law of the State of North Carolina and is threatening to discredit and injure all of the banks of

the State of North Carolina, which avail themselves of their rights under the laws of the State; that it is a well known practice of banks, and is sound and conservative banking recognized by the laws of the State, for banks to keep in their vaults in cash only a relatively small percentage of their deposits, and to keep their reserve moneys on deposit in various banking centers; that it is also customary for the greater part of the checks of all banks to be cleared through certain banking centers; and it is the universal custom for banks to make payment of their checks cleared through such banking centers, not in cash, but in exchange dawn on their various depositaries; that the defendant is attempting to nullify the law of North Carolina and deprive plaintiffs of their right to charge lawful fees for remittances in payment of checks by threatening that if plaintiffs make said charges as they are permitted to make by law, the defendant will save up checks drawn on plaintiffs, will present same for payment at the plaintiffs' banks, will refuse to take exchange in payment, and that if plaintiffs refuse to pay cash instead of the exchange provided by law, and which defendant impliedly agreed to accept by accepting checks as aforesaid, then defendant will return the checks as dishonored and will notify the drawers of said checks that plaintiff has refused to pay same; and that defendant has written out letters to the various banks of the State in which it announces as a definite policy that it will violate the rights of the State banks of North Carolina under said statutes, two of said letters being hereto attached marked Exhibits B and C respectively, and by reference made a part of this paragraph.

8. That as hereinbefore stated, plaintiffs intend to charge the fee prescribed by section one of said law and to tender exchange drawn on their depositaries as provided in section two of said law; and, if defendant saves up checks and presents them, as it is threatening to do in its said letters, it will be necessary for plaintiffs to pay same in exchange, as no ordinary bank carries in its vaults sufficient cash to pay checks which could be collected by a clearing bank over a considerable period

of time; that in tendering exchange drawn on its reserve deposits, plaintiffs will tender the same sort of exchange that defendant has been accustomed to accept and the same sort it is offering to accept if plaintiffs will agree to make remittance in payment of checks without charge, and the same sort of exchange that defendant agrees to accept by accepting checks drawn on plaintiffs since February 5th, 1921; that if defendant, its agents or servants, refuse to accept the exchange drawn by plaintiffs on their depositaries as allowed by law and return the checks drawn on plaintiffs as dishonored, as it is threatening to do, after plaintiffs have offered to comply with their contract, then the credit of plaintiffs will thereby be seriously impaired, and their solvency will be threatened and they will be seriously and irreparably damaged, all because of the wrongful act of defendant in returning as dishonored, the checks of plaintiffs which plaintiffs have offered to pay in the manner prescribed by the law of the State and in the manner which defendant impliedly assented to by acceptance of said checks.

9. That plaintiffs are advised and believe that the defendant should be enjoined and restrained from carrying out its threat, to refuse to accept exchange drawn by plaintiffs on their reserve deposits and to return as dishonored the checks drawn on plaintiffs for which plaintiffs shall have offered exchange drawn on their reserve deposits as allowed by the aforesaid statute of North Carolina, as the defendant is threatening to do, an act which will greatly and irreparably injure plaintiffs, in violation of the law of the State and in violation of the implied contract which it entered into in accepting said checks:

Wherefore, plaintiffs pray:

1. That the defendant, the Federal Reserve Bank of Richmond, its agents and servants, be permanently restrained and enjoined from carrying out its threat to refuse to accept exchange drawn by the plaintiffs on their reserve deposits, in payment of checks presented and to return such checks to the

drawers thereof as dishonored, because plaintiffs have refused to pay same in cash, and have tendered the exchange allowed by the laws of the State of North Carolina.

2. That a temporary restraining order issue restraining the defendant from carrying out its said threat, until the hearing of this petition for an injunction.

3. That plaintiffs recover their costs in this action.

4. For such other and further relief as may be appropriate at law or in equity.

STACK, PARKER & CRAIG,
Attorneys for Plaintiffs.

North Carolina—Union County.

C. B. Adams, being duly sworn, says: That he is the active Vice-President of the Farmers & Merchants Bank, one of the plaintiffs in the above-entitled action, and is acquainted with the facts; that he has read the foregoing complaint and that same is true of his own knowledge, except as to those matters therein stated on information and belief, and that as to those matters he believes it to be true.

Sworn to and subscribed before me, this the 9th day of February, 1921.

C. B. ADAMS,

Jas. M. Yandle, Deputy Clerk Superior Court.
(Seal of Superior Court of Mecklenburg County.)

PLAINTIFF'S EXHIBIT A WITH COMPLAINT.

An Act to be entitled
"An Act To Promote The Solvency Of State Banks."

The General Assembly of North Carolina do Enact:

Section 1. That for the purpose of providing for the solvency, protection, and safety of banking institutions and trust companies chartered by this State and having their principal offices in this State, it shall be lawful for all banks and trust companies in this State to charge a fee, not in excess of one-eighth of one per cent, on re-

mittances covering checks, the minimum fee on any remittance therefor to be ten cents.

Section 2. That, in order to prevent accumulation of unnecessary amounts of currency in the vaults of the banks and trust companies chartered by this State, all checks drawn on said banks and trust companies shall, unless specified on the face thereof to the contrary by the maker or makers thereof, be payable at the option of the drawee bank, in exchange drawn on the reserve deposits of said drawee bank when any such check is presented by or through any Federal Reserve Bank, postoffice, or express company, or any respective agents thereof.

Section 3. That it shall be unlawful for any person, or persons, other than the maker thereof, to make, by rubber stamp or otherwise, any notation on any check drawn on any bank or trust company chartered in this State, the effect of which notation shall change or affect any condition or provision thereof, as created by this Act. That any person or persons violating this section shall be guilty of misdemeanor, and upon conviction shall pay a fine of not more than two hundred ($200.00) dollars, or be imprisoned not more than thirty days.

Section 4. That all checks drawn on the banks and trust companies in this State in payment of obligations due the State of North Carolina or the Federal Government shall be exempt from the provisions of Sections 1 and 2 of this Act.

Section 5. That no officer in this State shall protest for non-payment any check or checks drawn on any bank or trust company chartered by this State when payment is refused by the drawee bank solely on account of failure or refusal of the holder or owner thereof to pay exchange charges herein authorized; and there shall be no right of action, either in law or equity, against any bank or trust company chartered by this State, for refusal to pay

any such check when such action is based alone on the ground of refusal to pay exchange or collection charges herein authorized.

Section 6. That all laws in conflict with the provisions of this Act are hereby repealed.

Section 7. That this Act shall be in full force and effect from and after its ratification.

FEDERAL RESERVE BANK OF RICHMOND

PLAINTIFFS EXHIBIT B WITH COMPLAINT.

Par clearance in the State of North Carolina.

February 1, 1921.

To the Member Bank addressed:

We enclose herewith a copy of an amended Bill, introduced in the Legisla'ure of the State of North Carolina, which may shortly become a law. You will see by its terms that the Bill authorizes non-member State banks to deduct an exchange charge when remitting for checks sent them; and, if the checks are presented through an express company, a postoffice, or a Federal Reserve Bank, to refuse payment in cash and tender exchange in settlement, even though the check is presented by an agent in person at the counter of the drawee bank. The Act also prohibits any notary from protesting any check if the drawee bank refuses to pay cash and tenders exchange.

Counsel for this Bank is of the opinion that such a law would be unconstitutional; and that, therefore, in accordance with the decision of the United States Circuit Court of Appeals in an injunction suit brought by the State banks of Georgia against the Federal Reserve Bank of Atlanta, if this Bill becomes a law, it will still be the duty of the Federal Reserve Bank of Richmond, under the Federal Reserve Act and the Regulations of the Board, to accept for collection checks drawn upon non-member State banks in North Carolina, sent to it by its member

banks and other Federal Reserve Banks, and to collect these checks at par, if possible, since under the above decision of the United States Circuit Court and the opinion of the Attorney General of the United States, Federal Reserve Banks cannot agree to permit a deduction for exchange.

If this Bill is enacted and any non-member State banks (relying upon it) refuse to remit at par for checks sent them by us, we will decline to permit any deduction for exchange, and will, as soon as it is practicable to do so, present all checks upon them at their counters by agents and demand payment in lawful money. If payment in cash is refused, we will decline to accept an exchange draft, and will return all checks upon which payment is refused with a proper notice of dishonor in lieu of formal protest. The proposed law does not make it obligatory upon non-member banks to deduct exchange in remitting or to tender exchange drafts in payment of checks when presented by a Federal Reserve Bank, express company, or the postoffice, but simply authorizes them to take that action.

It is impossible to foresee how many State banks in North Carolina may attempt to take advantage of this law, if and when enacted. To provide for that contingency and for the fullest protection of our member banks, we deem it advisable to notify them in advance of the course we shall feel called upon to pursue, and to advise them that there may be some unusual delay in presenting checks by agents at the counters of those banks which refuse to remit at par. Consequently, we wish to notify all of our correspondents that while we will continue to receive, if sent to us for collection, all checks upon non-member State banks listed upon our par list and will present such checks as soon as practicable, we cannot be responsible for the delays occasioned by our inability to procure agents to make presentation at the counters of

the drawee banks within the usual time; nor can we be responsible for the failure to procure a formal protest of such checks if payment in cash is refused.

Respectfully,
Federal Reserve Bank of Richmond.

PLAINTIFFS' EXHIBIT C WITH COMPLAINT.

Federal Reserve Bank of Richmond

February 7. 1921.

To the North Carolina Non-Member Bank addressed:

On November 15, last, North Carolina became an "all par" State, which means that checks on every bank in the State became collectible at their face value through Federal Reserve Banks. On November 17, last, there was held at Greensboro a called meeting of the North Carolina Bankers Association, at which time an organization was formed for the purpose of combating and defeating in the State of North Carolina the Par Collection Plan now in operation with banks comprising about 98 per cent of the banking resources of the country.

The North Carolina Legislature, now in session in Raleigh, has just passed an Act entitled: "An Act to Promote Solvency of State Banks." Section 1. of the Act provides that it shall be LAWFUL for all banks and trust companies in the State to charge a fee, not in excess of one-eighth of one per cent, on remittances covering checks. Section II. provides:

"All checks drawn on said banks and trust companies shall, unless specified on the face thereof to the contrary by the maker or makers thereof, be payable at the option of the drawee bank in exchange drawn on reserve deposits of said bank, when such checks are presented by or through any Federal Reserve Bank, postoffice, or express company, or any respective agents thereof."

A careful study of the Act will show that the Legislature intended to make it lawful to charge exchange when remittance is made by mail, but provides that when a Federal Reserve bank or its agent presents checks at the counter of the drawee bank, the drawee bank may, at its option, pay by draft on its correspondence instead of in cash, BUT DOES NOT PROVIDE FOR DEDUCTION OF EXCHANGE UNDER SUCH CIRCUMSTANCES. It is not obligatory upon State banks to deduct exchange in remitting, or to pay by drafts on correspondence when presented by any Federal Reserve bank, postoffice, or express company, or any respective agents thereof. The Act seeks to permit them take this action.

The non-member banks are encouraged to believe that the enactment of such a State law will result in restoring to them the right to charge exchange in all cases when paying checks on themselves, notwithstanding the fact that the Act of Congress and the decision of the United States Circuit Court of Appeals, in the injunction suit brought by certain State banks in Georgia against the Federal Reserve Bank of Atlanta, places upon the Federal Reserve banks the duty of receiving and collecting AT PAR checks on non-member banks, as well as on member banks.

In view of the peculiar situation which has arisen as a result of the passage of this Act, we feel called upon to define the position of the Federal Reserve Bank of Richmond.

We have been, and are now, paying postage on remittances from non-member banks and accepting their drafts on correspondents in payment of checks upon themselves, which is the identical character of funds which Section II. of the Act authorizes you to pay us when we present checks at your counter. We also now pay transportation charges when you elect to remit us in cash. The Act will,

therefore, not confer any privilege of payment as to the character of funds which you do now possess. Then, why not continue to send us exchange drafts by mail, using the stamped, addressed envelope which is furnished you with every cash letter? We believe it will be to your interest to do this because it is indisputably to the interest of your customers.

In the event you should not be willing to remit us AT PAR BY MAIL, we will be forced to present checks at your counter for payment IN CASH ONLY. Should payment in cash be refused, we will promptly return the checks to the banks from which we receive them, with a plain statement that the checks were presented by a personal representative of this Bank and payment in money refused, and a proper notice of dishonor will be attached to the checks in lieu of formal protest. All such checks upon which payment has been refused will, in due course, be returned to the drawer, YOUR CUSTOMER, who will then know you have refused to pay his check in money, in conformity with universal custom, and with requirement of law, as we believe. We will feel called upon to continue to do this as long as you make it necessary.

We are satisfied that state legislators have not the power to make a check drawn by one bank upon another legal tender. If one check may be paid with another, then actual payment is in danger of being defeated altogether in some cases. This is a dangerous power to attempt to confer and is against the public interest, in our opinion, and the Act is unconstitutional in the opinion of our counsel.

We are, of course, anxious to discharge our duties under the Federal Reserve Act with the least possible friction, and we will appreciate it very much if you will advise us (using the enclosed stamped, addressed envelope) whether you WILL or WILL NOT continue to remit us

at par by mail for checks on your Bank; or will you require us to present the checks at your counter, in which case we can accept payment only in cash?

Your careful consideration of this letter and your prompt reply will be appreciated.

Respectfully,
Federal Reserve Bank of Richmond.

AGREEMENT TO REMIT AT PAR

Federal Reserve Bank,
Richmond, Va.

Gentlemen:

We agree to remit you at par on day of receipt for all checks drawn on this bank, which may be sent us by you, in either Richmond, Baltimore, Philadelphia, or New York exchange, or by draft on our member bank correspondent bearing the "I. C." symbol of this district, or by shipment of currency at your expense.

Yours very truly,

(Name of bank and location.)

By------------------------------------
(Officer.) *(Title.)*

Date------------------------

REFUSAL TO REMIT AT PAR

Federal Reserve Bank,
Richmond, Va.

Gentlemen:

We will not remit you at par on day of receipt for all checks drawn on this bank, which may be sent us by you, in either Richmond, Baltimore, Philadelphia, or New York exchange, or by a draft on our member bank correspondent

bearing the "I. C." symbol of this district, or by shipment of currency at your expense.

Yours very truly,

(Name of bank and location.)

By----------------------------------

(Officer.) *(Title.)*

Date-------------------------

Whereupon his Honor, W. F. Harding made the following order, in consequence of which the order of R. W. Lemmond, C. S. C., was made and the injunction bond filed, as appears immediately following, and the cause was transferred to the Civil Issue Docket, of Union Superior Court, and the proceedings as stated hereafter in their regular order, had in the cause.

ORDER.

North Carolina—Union County.

In the Superior Court.

(Title of Cause.)

This cause coming on to be heard, upon the verified complaint and exhibits attached thereto, the allegations of which are found to be true, it is ordered that the defendant, the Federal Reserve Bank show cause before the Hon. J. Bis Ray, Judge holding the courts of the Thirteenth Judicial District of North Carolina, at Monroe, North Carolina, on Tuesday, the 1st day of March, 1921, why the prayer of the plaintiffs should not be granted, and why the defendant, its agents and servants, should not be restrained and enjoined from returning as dishonored, any of the checks drawn upon plaintiffs, for which the plaintiffs have tendered exchange, drawn upon their reserve deposits, as allowed by the Statute of North Carolina, referred to in the complaint; and it is ordered that in the meantime, the defendant, its agents and servants, be, and

they are hereby restrained and enjoined from returning as dishonored, any checks drawn upon the plaintiffs or any of them, since the 5th day of February, 1921, for which the plaintiffs shall have offered to give exchange, drawn upon their reserve deposits in solvent banks, as allowed by the Statute law of North Carolina.

It is further ordered that any bank or trust company incorporated under the laws of the State of North Carolina, may make itself a party to this proceeding and be entitled to the benefits of this restraining order, upon filing an appearance in this action and making itself a party plaintiff.

It is further ordered that the temporary restraining order herein granted shall become effective when the plaintiff shall file a good and sufficient bond in the sum of $1,000.00, to be approved by the Clerk, or the Deputy Clerk of the Superior Court of Union County, North Carolina, to hold the defendant harmless for any damage that it may sustain by reason of the granting of this order.

Witness the Honorable W. F. Harding, one of the Judges of the Superior Court of North Carolina, at Charlotte, on this the 9th day of February, 1921.

W. F. HARDING,
Judge.

ORDER.

North Carolina—Union County.
In the Superior Court.

(Title of Cause.)

To the Sheriff of Wilson County:

The plaintiffs having filed a good and sufficient bond in the sum of $1,000.00, as prescribed in the order of Judge W. F. Harding, this is to command you to serve the said Order upon the Federal Reserve Bank. Herein fail not, and of this process make due return.

Witness my hand and the seal of said court, this the 9th day of February, 1921.

R. W. LEMMOND,
Clerk of the Superior Court of Union County, North Carolina.

Served the foregooing summons and restraining order on the Federal Reserve Bank of Richmond by reading same and delivering copies thereof, together with copies of all the foregoing papers, to J. F. Bruton, one of the directors of said Federal Reserve Bank of Richmond.

B. E. HOWARD,
Sheriff, Wilson County, N. C.

INJUNCTION BOND.

North Carolina—Union County.
In the Superior Court.

(Title of Cause.)

We undertake in the sum of $1,000.00 that the plaintiffs in the above-entitled cause will pay to the defendant, all damages and costs which may accrue to the defendant by reason of the granting of the restraining order and injunction in this action.

This the 9th day of February, 1921.

FARMERS & MERCHANTS BANK, Monore, N. C. (Seal)
By C. B. ADAMS, Vice-Pres. (Seal)
M. K. LEE, (Seal)

ORDER.

North Carolina—Union County.
In the Superior Court.

(Title of Cause.)

To the Sheriff of Wilson County:

The plaintiffs having filed a good and sufficient bond in the sum of $1,000.00, as prescribed in the order of Judge W. F.

Harding, this is to command you to serve the said Order upon the Federal Reserve Bank. Herein fail not, and of this process make due return.

R. W. LEMMOND,
Clerk of the Superior Court of Union County, North Carolina.

Served the foregoing summons and restraining order on the Federal Reserve Bank of Richmond by reading same and delivering copies thereof together with copies of all the foregoing papers, to J. F. Bruton, one of the directors of said Federal Reserve Bank of Richmond. This the 10th day of February, 1921.

B. E. HOWARD,
Sheriff, Wilson County, N. C.

North Carolina—Union County.
In the Superior Court.

(Title of Cause.)

M. G. Wallace of Richmond, Va., H. G. Connor, Jr., of Wilson, N. C., and C. W. Tillett, Jr., of Charlotte, N. C., enter a special appearance in this case for the defendant, which special appearance is made solely for the purpose of lodging a motion to remove this action from the Superior Court of Union County, N. C., to the District Court of the United States for the Western District of North Carolina, at Charlotte, North Carolina, and for no other purpose.

This the 28th day of February, 1921.

W. G. WALLACE,
H. G. CONNOR, JR.,
C. W. TILLETT, JR.,
Attorneys for the defendant, The Federal Reserve Bank of Richmond, Va.

NOTICE OF PETITION FOR REMOVAL OF THIS CAUSE TO THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

North Carolina—Union County.
In the Superior Court.

To the plaintiffs in the case above styled, or their Attorneys of record, Messrs. Parker & Craig:

Please take notice that the defendant will, on the 28th day of February, 1921, at ten o'clock, A.M., or as soon thereafter as counsel may be heard, file with the Superior Court of Union County, N. C., its petition and bond for the removal of the above entitled civil action to the District Court of the United States for the Western District of North Carolina in accordance with the petition and bond of the defendant, copies of which are hereto attached and will, at the same time, move the court for an order removing the said action to the said District Court.

This the 24th day of February, 1921.

H. G. CONNOR, JR.,
J. C. LITTLE,
M. G. WALLACE,
C. W. TILLETT, JR.,
Attorneys for Defendant.

BOND FOR THE REMOVAL OF THIS CAUSE TO THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

North Carolina—Union County.
In the Superior Court.

(Title of Cause.)

KNOW ALL MEN BY THESE PRESENTS, that we, Federal Reserve Bank of Richmond, a body corporate under the laws of the United States, having its office and principal

place of business in the City of Richmond, State of Virginia, as principal and the National Surety Company, a body corporate under and by virtue of the laws of the State of New York, having its principal office and place of business in the City of New York, New York, and authorized by its charter to enter into this undertaking, as surety, are held and firmly bound unto the plaintiffs in the above entitled action, their successors and assigns in the sum of one thousand ($1,000.00) dollars, lawful money of the United States, for the payment of which well and truly to be made we and each of us bind ourselves and each of us our successors, heirs, executors and administrators, jointly and severally by these presents.

The condition of this obligation is such that:

Whereas, the said Federal Reserve Bank of Richmond has applied by petition to the Superior Court of the County of Union, State of North Carolina, for the removal of a certain cause therein pending wherein the Farmers & Merchants Bank of Monroe, N. C., and others are plaintiffs, and the Federal Reserve Bank of Richmond, is defendant, to the District Court of the United States for the Western District of North Carolina, for further proceedings on grounds in said petition set forth, praying in said petition that all further proceedings in said action in said Superior Court of Union County, North Carolina, be stayed.

Now, therefore, if said petitioner, to-wit, The Federal Reserve Bank of Richmond, shall enter into said District Court of the United States for the Western District of North Carolina, aforesaid, within thirty days from filing of said petition, a certified copy of the record in such suit and shall pay or cause to be paid all costs that may be awarded therein by the said District Court of the United States if said Court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise, shall remain in full force and effect.

Witness the hands and seals of all the undersigned parties

ereto affixed, this the 21st day of February, 1921.

FEDERAL RESERVE BANK OF RICHMOND.
By CHAS. A. PEPLE,
Deputy Governor.
As Principal.

NATIONAL SURETY CO.,
ttest. By SOUTHERN TRADING CO.,
Agent.
GEORGE H. KEESEE.
Cashier.
By J. G. PRIDMORE, Asst. Manager.
As Surety.
By J. G. PRIDMORE, Atty in fact.

Service of the within notice, petition and bond accepted in ehalf of all parties plaintiff, those who have become parties laintiff since the commencement of the action and those who ay hereafter become parties plaintiff, as well as the parties riginal plaintiff; the delivery of a copy of the within notice, etition and bond admitted.

This the 24th day of Feb., 1921.

STACK, PARKER & CRAIG,
Attorneys for Plaintiff.

'ETITION.

North Carolina—Union County.
In the Superior Court.

(Title of Cause.)

Petition for removal to the District Court of the United tates for the Western District of North Carolina at Charlotte.

To the Honorable, the Superior Court of Union County, 'orth Carolina.

Your petitioner, Federal Reserve Bank of Richmond, re-ectively represents and shows to this Honorable Court as llows:

1. That this is a civil action brought in this court by the plaintiffs above named against the defendant above named, plaintiffs praying for injunction and other extraordinary relief.

2. That said action is a civil action and arises under the Constitution and laws of the United States for the reason that the Federal Reserve Bank of Richmond, the defendant herein, is a corporation, organized in pursuance of and obedient to that certain Act of Congress, known as the Federal Reserve Act, and is in the complaint of the plaintiffs alleged to be such.

3. That the matter in controversy in said suit exceeds, exclusive of interest and costs, the sum or value of $3,000.

4. The value of the alleged right of each of the plaintiffs sought respectively, to be protected in and by the complaint filed herein exceeds the value of $3,000. exclusive of interest and costs.

5. The matter in controversy in said suit between each of the plaintiffs and the defendant exceeds, exclusive of interest and costs, the sum or value of $3,000.

6. The Federal Reserve Bank of Richmond is an agency of the United States organized and doing business in accordance with that Act of Congress known as The Federal Reserve Act and by sections 13 of such act, it is expressly authorized, among other things, to receive from any of its member banks, checks and drafts payable upon presentation and from other Federal Reserve Banks, checks and drafts payable upon presentation within its district for the purpose of collection and the said Act expressly prohibits any exchange charge or fee to be collected from any Federal Reserve Bank. The plaintiffs by this action seek to restrain and prevent the Federal Reserve Bank from collecting checks upon them thereby preventing it from performing its public functions as defined by the said Federal Reserve Act.

7. Your petitioner further shows that this petition is made and filed before your petitioner is required by the laws of the State of North Carolina, or the rules of this Honorable Court, to answer, demur, or otherwise plead to the complaint of plaintiffs, and that it is desired by your petitioner the defendant herein, to remove said cause from this Honorable Court to the District Court of the United States for the Westem District of North Carolina, in accordance with the provisions of the Acts of Congress of the United States in that behalf made and provided.

8. Your petitioner herewith presents and files a good and sufficient bond as provided by the statutes in such case made and provided, in the penal sum of $1,000.00, that they will enter in such District Court for the Western District of North Carolina, within thirty days from the filing of this petition, a certified copy of the record in this suit and for the payment of all costs which may be awarded by the said court, if the said District Court shall hold that this suit was wrongfully or improperly removed thereto. Written notice of this petition and of said bond for removal have been given counsel for the plaintiffs prior to the presentation and filing of this petition.

Wherefore, your petitioner presents this petition to the court and prays that said bond may be accepted as good and sufficient and that this Honorable Court will make and enter an order for the removal of this suit into the District Court of the United States for the Western District of North Carolina, in which District this suit is pending pursuant to the Acts of Congress in such cases made and provided, and this court proceed no further therein, except to make the said order of removal, and that the court direct a transcript of the record herein to be made for said court as provided by law.

And as in duty bound, your petitioner will ever pray: etc.

H. G. CONNOR,
M. G. WALLACE,
J. C. LITTLE,
Attorneys for Petitioner.

Commonwealth of Virginia—City of Richmond.

Chas. A. Peple, being duly sworn, says: That he is an officer of the Federal Reserve Bank of Richmond, to-wit: Deputy Governor thereof, that he has read the foregoing Petition, that the same is true of his own knowledge, except as to those matters stated on information and belief and as to those matters, he believes it to be true.

CHAS. A. PEPLE.

SPECIAL DEMURRER.

North Carolina—Union County.

In the Superior Court.

(Title of Cause.)

Now come the Farmers & Merchants Bank, Monroe, N. C.; Bank of Hoke, Raeford, N. C.; Page Trust Company, Aberdeen, N. C.; Banking Loan & Trust Company, Sanford, N. C.; Page Trust Company, Carthage, N. C.; Page Trust Company, Hamlet, N. C.; Bank of Sanford, Sanford, N. C.; Bank of Pinehurst, Pinehurst, N. C.; Merchants & Farmers Bank, Aberdeen, N. C.; Farmers Bank, Rockingham, N. C.; Bank of China Grove, China Grove, N. C.; Bank of Hamlet, Hamlet, N. C.; and Bank of Broadway, Broadway, N. C., by their attorneys of record and demur to the petition for removal of said case to the District Court of the Untied States for the Western District of North Carolina, heretofore filed in said cause, on the following ground, to-wit:

1. Because said petition does not include all of the parties plaintiff in said cause, as appears from the record in said case.

2. Because said case does not arise under the constitution and laws of the United States, by reason of the Federal incorporation of the defendant, Federal Reserve Bank, nor for any other reason appearing in the allegations of the original bill in said case or in said petition for removal.

3. Because said suit does not involve any controversy or

dispute over any matter capable of being estimated in money, and is, therefore, not a removable case.

Of all of which respondents pray the judgment of the court.

STACK, PARKER & CRAIG,
ALEX W. SMITH,
Respondents Attorneys.

Subscribed and sworn to before me this the 19th day of February, 1921.

C. WESSAL BLACKBURN,
Notary Public.

(Notarial Seal.)

The within petition was filed in time and the bond is approved. After argument of counsel I am of opinion that the plaintiffs cause of action as alleged in said case arises under a valid law of North Carolina, and that the controversy does not involve matters capable of being estimated in money, and I hold as a matter of law that the case is not removable to the District Court of the United States for the Western District of North Carolina, and I decline to order its removal and retain jurisdiction over it.

In open court February 28, 1921.

J. BIS RAY,
Judge Presiding.

Requisition from the Federal Court for the Western District of North Carolina, having been made upon the Clerk of the Superior Court of Union County, for a transcript of the record in this cause, to be docketed in the Federal Court for the Western District of Nerth Carolina, the transcript was accordingly forwarded and, on July 21, 1921, Honorable E. Y. Webb, Judge, transmitted and caused to be filed his opinion in said cause, which is as follows:

ORDER.

North Carolina—Union County.
In the Superior Court.

(Title of Cause.)

This cause coming on before the undersigned Judge, on the notice to show cause returnable this date, and the defendant not appearing in response to the notice, and it appearing that on February 28th, 1921, the attorneys for the defendant made a motion to remove the cause to the Federal Court, which was denied, and that the attorneys for the defendantt have stated their intention of docketing in the Federal Court the transcript of the record in this court.

Now, therefore, it is ordered that the hearing on the notice to show cause be continued to the next term of this court, and it is also ordered that the restraining order heretofore granted be continued until the further order of this court; and it is further ordered that any banks incorporated under the laws of the State of North Carolina, and not members of the Federal Reserve System, may make themselves parties to this action, and upon doing so shall be entitled to the benefits of the said restraining order.

Done at Monroe, N. C. this the 1st day of March, 1921.

J. BIS RAY,
Judge Presiding.

14-62

OPINION AND JUDGMENT.

In the District Court of the United States, for the Western District of North Carolina, at Charlotte.

(Title of Cause.)

This matter is before the court on motion of the plaintiffs to remand the action to the Superior Court of Union County,

North Carolina. The specific relief demanded by the plaintiffs in their bill of complaint is the following:

"That the defendant, the Federal Reserve Bank of Richmond, its agents and servants, be permanently restrained and enjoined from carrying out their threat to refuse to accept exchange drawn by the plaintiffs on their reserve deposits, in payment of checks presented and to return such checks to the drawers thereof as dishonored, because plaintiffs have refused to pay same in cash, and have tendered the exchange allowed by the laws of the State of North Carolina."

The only point to be decided by the court is whether or not, under section 24 of the Judicial Code, the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars.

The court heard the evidence and the able arguments of counsel during the period of four days at Charlotte, and has given the question very careful consideration since that time. Both sides cited authorities tending to sustain their contentions, to-wit, that this court has or has not jurisdiction. These authorities the court has read with great interest, and it frankly confesses that it is in doubt about its jurisdiction in the matter.

The real question at issue is largely one of fact, and the court finds itself unable clearly to conclude that the matter involved exceeds the sum of three thousand dollars. Being unable so to do, the court is therefor constrained to remand the case to the Superior Court of Union County.

It is well known and universally established by the opinions of many courts, including the Supreme Court of the United States, that the jurisdiction of the District Courts of the United States is limited, in the sense that they have no jurisdiction except that conferred by the constitution and laws of the United States; and the presumption is that a case is without their jurisdiction unless the contrary affirmatively appears. This limited or conferred jurisdiction applies to cases both at law and in equity, and, as was said in the case of Oregon

Railroad and Navigation Company v. Shell, 143 Fed., 1005.

"The courts are required to apply the same technical rules in equity cases that are applied in actions at law for the purpose of being assured of jurisdiction."

In one of the early and leading cases on this question, decided by the Supreme Court of the United States, Barry v. Mercein, 5 Howard 103, the court held that in order to give the Federal Court jurisdiction in cases dependent upon the amount in controversy "the matter in dispute must be money, or some right, the value of which, in money, can be calculated and ascertained." Chief Justice Taney, in this case, further says with reference to jurisdiction being dependent upon the amount involved that jurisdiction in such cases can be had "only where the rights of property are concerned, and where the matter in dispute has a known and certain value, which can be proved and calculated in the ordinary mode of a business transaction."

Again, in the case of DeKrafft v. Barney, 2 Black 704, it is held, Chief Justice Taney writing the opinion, that the matter in dispute must be money or some right, the value of which could be calculated or ascertained in money.

Now, the plaintiffs in this action ask only and solely that the defendant be restrained from publishing what the plaintiffs contend are false statements about the plaintiffs' method of paying their checks. That is the real issue in this case and the real matter involved, although collaterally and indirectly, the question of par clearance, exchange charges by the plaintiff banks and the act of the Legislature of North Carolina authorizing the state banks to make exchange charges may be considered. The continuance of the publication of the alleged false statements may result in some pecuniary loss to the plaintiffs, but what that loss may be, or how it may come about, are purely speculative; and the court knows of no rule by which such damages, if any, could be reckoned in dollars and cents and for the purpose of giving this court jurisdiction of this action.

On the other hand, the court cannot see how any calculable money value can accrue to the defendant by its continuance in the publication of the statements which the plaintiffs allege to be false. Neither can the court ascertain the loss in money, if any, which the defendant will suffer should it be restrained from the publication of the statements referred to. Certainly, the morey value involved, if any, is too hazy, indefinite and speculative for the court to base so important a jurisdictional finding upon.

The defendant cannot suffer by trying this case in the State Court, because there it can present all of its defences, and as a Federal question is involved can carry the case to the Supreme Court of the United States. No injustice, therefore, can be done either party to the suit by trying the case on its merits in the State forum.

The case is therefore remanded. This July 21, 1921. The Clerk will enter.

E. Y. WEBB,
Judge U. S. District Court.

Whereupon the defendant, through its counsel, came and answered as follows:

ANSWER.

In the State of North Carolina—Union County.
In the Superior Court.

(Title of Cause.)

The defendant, the Federal Reserve Bank of Richmond, Virginia, answering the complaint herein, says:

(1) That paragraph one thereof is admitted.

(2) That paragraph two thereof is admitted.

(3) That paragraph three thereof is admitted.

(4) It is admitted that on the fifth day of February, 1921,

there was enacted and ratified by the General Assembly of North Carolina, an Act entitled "An Act to Promote the Solvency of State Banks." That the other portions of the said paragraph, in which the plaintiff attempts to set out the meaning, intent and effect of said Act are denied.

(5) Answering the averments and allegations contained in the fifth paragraph this defendant says, that while it is advised, informed and believes that it is not necessary to answer the said paragraph as it contains averments, allegations and conclusions of law, this defendant says that it refers to the said Act as to the terms and provisions thereof and the true intent and meaning thereof. This defendant denies that it, by accepting any checks drawn since the fifth day of February, 1921, on any Banks and Trust Companies organized under the laws of the State of North Carolina, assents to the provision of said Act or agrees to accept exchange checks drawn upon the reserve deposits of said Banks and Trust Companies, in payment of such checks so presented.

This defendant, by way of further answer to the said fifth paragraph says that a very large percentage of the checks received and which will in the future be received by this defendant drawn upon the State Banks and Trust Companies of the State of North Carolina, are drawn or delivered to the payees thereof and also delivered to this defendant outside of the State of North Carolina, and that the same are not affected by the said Act of the General Assembly of North Carolina, dated February 5, 1921, even if it should be determined that the said Act is Constitutional and lawful, this defendant expressly alleging that the said Act, in so far as it attempts to confer upon Banks organized under the laws of the State of North Carolina, the right and privilege of tendering to this defendant in payment of checks presented by this defendant, checks drawn by such Banks and Trust Companies upon their reserve, is void and in conflict with and in violation of the provisions of the Constitution of the

United States and of the various Amendments thereto, as will hereinafter be more fully set out.

(6) The defendant admits the allegations of paragraph six but denies that the proposed action of the plaintiffs, as set forth in said paragraph, is in any respect lawful. Defendant further avers that the provisions of the said Act of the General Assembly of North Carolina relied upon by the plaintiffs as aforesaid for their proposed actions, as set forth in said paragraph, are unlawful, null, void and of no effect, as being in violation of and contrary to the Constitution and laws of the United States of America.

(7) Defendant denies that it is attempting to force plaintiffs and all other banks of North Carolina to make remittances in payment of checks free of charge, or that it is acting in defiance of any valid law of the State of North Carolina, or that it is threatening to discredit and injure all of the banks of the State of North Carolina which avail themselves of their rights under the laws of the State. Defendant admits that it is the practice of many banks to keep a portion of their reserve money on deposit in various banking centers, but avers that it is the duty of every bank to keep on deposit enough money to pay checks of its depositors presented at its counter for payment where there are adequate deposits with said bank upon which said checks are drawn. Defendant admits that it is customary for a part of the checks of all banks to be cleared through banking centers and that by local agreement banks often make payment of their checks cleared through such banking centers in exchange drawn on their various depositaries but it avers that there is no obligation upon any person holding a check upon any bank in the State of North Carolina or elsewhere upon the presentation of such check to accept a check or checks upon such reserve reposits, but it is the right of every person upon presentation of such check to receive legal tender therefor if the deposit upon which said check is drawn is adequate to meet the same. Defendant denies

that it has threatened to hold or save up checks drawn on the plaintiff banks for the purpose of embarrassing the plaintiff banks, or any of them, but avers that it is not permitted by law, and cannot accept in payment of said checks the exchange checks of said plaintiff banks on their reserve funds in other banks except at par, and that it is not permitted by law to pay or permit the deduction of exchange charges for the remittances or payment of such checks; that it will present any checks which come into the possession of the defendant upon the plaintiff banks at the counter of said banks for payment as promptly as is reasonably practicable in the course of business, and will use every reasonable effort to avoid undue embarrassment or inconvenience to the plaintiffs, or to any of them, in the conduct of their business. Defendant denies that is impliedly agreed to accept exchange checks of said plaintiff banks in payment of checks held or which may be held by it, drawn upon them respectively, but avers that if the checks of the plaintiff banks, or any of them, are presented by this defendant at their respective counters and are unpaid, it will be the duty of this defendant under the laws of the States in which the defendant received such checks to return said checks to the person from whom the same are received by this defendant, and to give to such person and to all prior parties to the check, due notice that it is dishonored, to the end that said persons may take action under the law to protect their said rights and interest in said checks, and that it is the duty of this defendant in such circumstances, to notify the drawers of said checks or the persons through whom the same are received by this defendant that the bank upon which said checks are respectively drawn have refused to pay the same. Defendant admits that it has written certain letters to various banks of the State of North Carolina, in which is explained its position in connection with this matter, but denies that it will violate the rights of State Banks of North Carolina under the valid statutes of said State, or otherwise, defendant says that the papers filed with said bill of complaint, marked

"Exhibit B" and "Exhibit C" respectively are substantially correct copies of the letters sent out by this defendant, but prays leave to refer to the original or a verified copy of said letters for the true contents and provisions thereof, defendant denies each and every allegation in said paragraph 7 of said bill of complaint, except as herein expressly admitted.

(8) Defendant denies that it will be necessary for plaintiffs or any of them to pay in exchange checks presented upon them by this defendant, and denies that it is the purpose of this defendant to hold unduly or save up checks upon the plaintiffs, or any of them. Defendant avers that it is the duty of every bank to carry in its vaults sufficient cash to pay checks presented at its counter, and denies that there is any purpose on the part of this defendant to hold checks for collection over any reasonable period of time. Defendant has no information sufficient to form a belief as to whether the exchange checks or drafts proposed to be tendered by plaintiff banks in payment of checks drawn on them respectively are substantially the same sort of exchange that defendant has been accustomed to accept in payment of checks drawn on banks in this district for which the defendant acts as clearing house or clearing agent, but defendant avers that its acceptance of any such checks is purely a matter of contract between itself and each of the banks issuing the same, and that there is no obligation upon this defendant to accept exchange checks or drafts from any bank in the payment of checks drawn upon said bank, when said checks are presented by this defendant, but it is the right of this defendant to receive in payment for said checks legal tender money. Defendant denies that plaintiffs, or any of them, will be irreparably injured or damaged by the acts of this defendant in presenting checks drawn upon said plaintiff banks, or any of them, for payment in lawful money of the United States at the counter of said banks, respectively, in accordance with the contracts of said banks with their respective depositors, and denies that this defendant impliedly or otherwise assented to the payment of

checks upon said plaintiff banks, or any of them, in any other manner than in lawful money of the United States. Defendant denies each and all of the allegations contained in paragraph 8 of said bill of complaint, except as hereinbefore expressly admitted.

(9) Defendant denies the allegations of paragraph 11 of said bill of complaint.

(10) Any by way of other and further defense to the plaintiffs' alleged cause of action, this defendant says:

In the earlier period of banking in the United States, there were various systems of currency issued under authority of the several states, which currency had only a local circulation at par. With the commercial development of the country, and increasing use of checks in payment of personal and commercial obligations, it became necessary, under conditions, then existing, to transmit large amounts of money from one section of the country to another to cover balances, and to clear exchange obligations. Under the imperfect transportation methods then available, these transfers of actual money involved large expense to the banks in the nature of charges for transportation and insurance, and in the loss of interest on funds in transit. To cover this expense and loss, exchange charges were made upon the payment of checks transmitted through other banking institutions than that upon which the check was drawn, and particularly from banks of other localities. This exchange charge varied with the distance and other elements entering into the cost of transportation of funds. But even under the difficult conditions existing in the earlier history of the country with respect to the transportation and remission of funds, it was always recognized that it was the duty of the bank upon which checks were drawn, if available funds were on deposit to meet the same, to pay such check at par upon the presentation thereof at its counter, either by the payee thereof or by his agent, whether a local banking institution or otherwise.

The subsequent elimination of local currencies by tax on

state bank issues, and the universal use of national currency represented by treasury notes and the issues of national banks, together with improved means of transportation and communication by railway and telegraph, all tended to reduce the necessity for and cost of currency transfers, and to a corresponding degree to reduce or render unnecessary internal exchange charge by banks, which charges imposed a very heavy burden upon the commerce of the country.

The reduction and gradual elimination of exchange charges upon or for the payment of checks, while a necessity result of the natural and economic causes, has been a process of slow development. It was first accomplished in commercial centers though the establishment of clearing houses or voluntary associations of local banks, through which checks drawn on any of these banks, members of the association, were cleared by credit and individual charges on the books of the associations, leaving it necessary only to discharge daily individual balances, and reducing to a large extent the necessity for transfer of funds between the banks' members of the clearing house. The clearances between commercial centers were accomplished through the banks in each of these centers establishing relations of correspondent with a bank or banks in other centers, and it became the general custom in such cases for the correspondent banks to clear and collect checks on the banks of their respective localities, and sometimes also upon banks in adjacent territory, without charge against the correspondent bank by which such checks were transmitted from another center, the services rendered by the correspondent banks in the various centers offsetting each other or being covered by proper deposit accounts to meet the change of business. The collection of checks on and for the banks in the country districts and smaller communities was accomplished by means of correspondents established by such local banks with banks in commercial centers with which they maintained deposits adequate to provide for such service. But the country banks and banks in smaller communities frequently continued

to make exchange charges on the payment of checks presented through their correspondents and the transmission of funds to the banking centers to meet such exchange requirements. As the result of the development of this system, exchange charges between banks were gradually eliminated in the commercial centers of the country, and in some sections between the country banks and such commercial centers where means of transportation were so developed that collections could be promptly made, while they continued in the more sparsely settled sections of the country, thus imposing upon the rural districts and more sparsely settled districts the heavy burden of such exchange, resulting in a severe commercial discrimination against such sections.

A further result of this system, developed through the voluntary action of the banks themselves, as a result of improved facilities for transportation and communication, and in meeting competition, was that the banks in the outlaying districts of the country maintained a considerable proportion of their reserves in the reserve centers and reserve cities, and carried as a part of their reserve all checks forwarded on such reserve cities or reserve centers from the day on which the same were transmitted, although the actual collection of such checks might have been delayed for several days. This system necessarily resulted in carrying as reserve upon the books of these outlaying banks considerable sums, which were in fact not on deposit as reserve, but were in float or in process of collection, and in periods of commercial strain this condition seriously endangered the safety of the banking system of the country.

It was partly to remedy this condition as to the reserve, and gradually to relieve the commercial system of the country of the heavy burden of costs in the transfer of funds from point to point by providing more direct and economical means for the clearance of checks, that the Federal Reserve Act of 1913 was passed by Congress, and the Federal Reserve Banks, of which this defendant is one, were established. Under the terms of that Act, twelve Federal Reserve Banks were estab-

lished in the United States, each to operate in a district to be defined as therein provided, the defendant being the Federal Reserve Bank for the Fifth District so established. All of the Federal Banks established by that Act were subject to the control of a central board known as the Federal Reserve Board, which had headquarters at Washington. Defendant begs leave to refer to said Act for a more complete statement of the terms and provisions thereof, and of the powers and duties of the banks established thereby, and of the Federal Reserve Board in control thereof.

By the first paragraph of Section 13 of said Act as originally enacted, the Federal Reserve Banks were authorized to receive from any member banks, and from the United States, deposits of current funds "or checks and drafts upon solvent member banks payable upon presentation; ' or solely for exchange purposes to receive' from other Federal Reserve Banks deposits of current funds in lawful money, national bank notes or checks and drafts upon solvent members or other Federal Reserve Banks payable upon presentation." By Act of September 7, 1916, this section was amended so as to authorize the Federal Reserve Banks to receive "checks and drafts payable upon presentation within its district" (without limiting the same to member banks), and Federal Reserve Banks as in the original Act. By Act approved June 21, 1917, Congress further amended this section of the Act to authorize the Federal Reserve Banks not only to receive checks and drafts payable upon presentation within its district, but for the purpose of exchange or collection to receive from any non-member bank or trust company deposits of current funds in lawful money, national bank notes, Federal Reserve notes, checks and drafts payable upon presentation or maturing notes and bills, and while this Act expressly provided that it should not be construed to prohibit reasonable charges for exchange to be determined and regulated by the Federal Reserve Board, no such charges for exchange should be made against the Federal Reserve Banks.

Prior to the time that these amendments were made to the Federal Reserve Act, there had been established in various sections of the country associations known as "Country Clearing Houses," for the purpose of clearing checks in the territory contiguous to the centers in which such clearing houses were established at par, and arrangements had been or were being made whereby the Federal Reserve Banks in the several districts in which such country clearing houses had been established, as well as those in which such country clearing houses had not been established, should gradually take over the functions of clearing the checks upon banks in their several districts at par, and thus relieve the commercial system of the country from the heavy exchange charges still existing and especially in those districts served by the rural banks causing a heavy and injurious discrimination against such rural districts in their commercial transactions. The Federal Reserve Banks in carrying out this general plan and gradually establishing clearance of checks at par throughout the United States will inevitably relieve the rural districts of this heavy discrimination and remove the burden imposed upon commercial transactions.

Under the operation of the par collection system of the Federal Reserve Banks, shipment of money is made unnecessary, except to the slight extent that it may be necessary to ship notes and minor coins between each Federal Reserve Bank and its member banks, not to settle for collections, but to meet the increase or decrease in the demands of the banks and their customers for currency for local use in daily transactions. The Federal Reserve Banks keep the larger portion of their gold reserve in the treasury of the United States, and when a check given in one section but payable in another is collected, it is charged against the bank on which it is drawn by the Federal Reserve Bank which collects it, and is credited to the bank in which it was first deposited by the Federal Reserve Bank of its district. Adjustment is made between the Federal Reserve Banks by charging one and crediting the

other in the gold fund held in Washington, such settlements between Federal Reserve Banks being made by telegraph, so that under this system there is no actual shipment of money or currency, and the reason for charging exchange, which was originally intended to compensate for the cost of shipping money, has wholly ceased. The defendant is advised and charges that it was in view of the above facts that Congress prohibited any charge for exchange from being made against any Federal Reserve Bank.

This defendant and other Federal Reserve Banks were advised by opinion of the Attorney General of the United States that it or they could not pay exchange charges for such check collections in their respective districts, and this defendant in its effort to carry out the intent of Congress as expressed in the legislation aforesaid, and to discharge its obligations under the laws of the United States formulated plans for the gradual institution of par clearance system in the Fifth Reserve District, in which defendant is required by law to operate a system of the states of Maryland, Virginia, North Carolina, South Carolina, a portion of West Virginia and the District of Columbia. It was and is the purpose of this defendant in putting said system into effect in pursuance of the intention of Congress, manifested in the legislation aforesaid, to accomplish this result with the least possible injury or inconvenience to the various banks of the district affected thereby, and to install the system gradually with due regard to the convenience of said banks.

In pursuance of this policy and of the legislation aforesaid, this defendant perfected arrangements by September 10, 1919, for inaugurating the par clearance system in the State of Maryland, at which time all but five of the banks in said state began to remit at par for checks sent them through the mails, and thereupon inaugurated the system in said State of Maryland. On February 1, 1920, the system of par clearance indicated above was inaugurated in the State of West Virginia, at which time all but eight banks in said state began to remit

at par for checks sent them through the mails. On April 1, 1920, this system was inaugurated in the State of Virginia, at which time all but twenty-four banks in said state began to remit at par for checks sent them through the mails. On November 15, 1920, this system was inaugurated in the State of North Carolina, at which time all but twenty-four banks in said state began to remit at par for checks sent them through the mails.

At the present time of the total of 30,450 banks in the United States all of said banks are remitting at par with the exception of 1,932, and the system of par clearance with the corresponding benefit to the commercial interests of the country, and especially to the people of the rural districts who have heretofore suffered from severe discrimination on account of exchange charges is rapidly being extended to every part of the country with the general approval of the banking and commercial interests of the entire United States. During the calendar year 1920, as shown by the annual report of the Federal Reserve Board, the twelve Federal Reserve Banks received for collection and collected at par 446,671,183 checks and dafts upon banks and bankers in the United States, and the total of these collections amounted to $157,449,605,000.

Defendant says that in discharging its duty in the development of said system of par clearance, and in rendering the services required of it by law to the banking and commercial interests and to the people of the Fifth Reserve District, it has undertaken in the past, and is now undertaking to do so with the least possible interference with the general course of business of the banks, and with the least possible inconvenience to or embarrassment of the various banking institutions, and especially the small banks in the country districts affected by said system and the resulting change in the methods of conducting their business. Defendant emphatically denies that it has threatened to hold or accumulate, or has held or accumulated, or will in the future hold or accumulate any check or checks drawn on any bank in this district beyond

the usual requirements for the presentation of said checks in the course of business, and that it will present checks to any bank refusing to clear at par by mail in accordance with the system hereinbefore outlined as promptly as practicable in the due course of business, and in such manner as to cause to said bank or banks the least practicable inconvenience in meeting its obligations upon said checks, and in the continuance of its business, and that this is especially true of the banks plaintiffs in this cause, and each of them.

And further answering, defendant says that it is required in the discharge of its duties under the law to handle and clear the checks for its members, and also for non-member banks to avail themselves of the benefits of its service in accordance with the law; that it is not permitted by law to pay exchange charges for the collection of or remission of checks on any banks in the district which it serves; that if the plaintiff banks or any other banks in this district decline to remit at par in accordance with the plan aforesaid, and to avail themselves of the privilege of par exchange in the collection of their own checks on other banks, as they are fully entitled to do under said system, then defendant is compelled to present said checks at the counter of said banks so refusing to comply with or avail themselves of said system for payment in accordance with the terms thereof, or to refuse to handle said checks to the great inconvenience of the banks availing themselves of plaintiffs' services and in violation of the intent of the law as manifested by the Acts of Congress aforesaid, and that in discharging its duties as to any banks refusing to avail themselves of the benefits of said system of par clearance, and especially as to the plaintiff banks and each of them, the defendant will handle the collection of said checks so presented through it in such manner as to cause the same to be presented in due course of business with the least practicable delay, and in the same manner that they would be presented if received for collection by any bank in the same town or locality.

And by way of other and further defense to the plaintiffs alleged cause of action this defendant says:

That it is advised, informed and believes and so avers that the rights or pretended rights which the plaintiffs claim under and by virtue of that certain Statute being an Act entitled "An Act to Promote the Solvency of State Banks," duly ratified by the General Assembly of North Carolina on the 5th day of February, 1921, and being the Act set out and referred to in the complaint herein, do not and cannot exist for that the said Statute is null, void, and unenforcible as it is in conflict with and in violation of the Constitution and laws of the United States and therefore confers no rights upon the plaintiffs or any other person, for the following reasons, among others:

(A) That the said statute attempts to authorize or empower the plaintiffs and other banks and trust companies organized under the laws of the State of North Carolina, to tender in payment of checks drawn upon said plaintiff banks or other banks and trust companies respectively, which checks are upon their face payable in lawful money of the United States, a check or draft of said bank or banks or trust companies respectively, which is in conflict with Section 10, Article I of the Constitutioon of the United States, and laws passed in pursuance thereof, and said statute is therefore null, void and unenforcible and confers no rights upon said plaintiffs, or any of them.

(B) Because the alleged statute of the State of North Carolina upon which the rights, sought to be asserted in and by said bill of complaint are predicted, seeks to confer upon the plaintiffs and upon state banks and trust companies, organized under the laws of the State of North Carolina, special and peculiar privileges not granted to other persons, natural and corporate, within the jurisdiction of the State of North Carolina, and is therefore in conflict with Section I of Article 14 of the Constitution of the United States, and laws passed in

pursuance thereof, and is null, void and unenforcible, and confers no right upon the plaintiffs or any of them.

(C) Because said alleged statute of the State of North Carolina upon which the alleged rights of the plaintiffs are predicated, seeks to deny to the defendant the equal protection of the laws, and is therefore in conflict with Section I, Article 14 of the Constitution of the United States, and is null, void and unenforcible, and confers no rights upon the plaintiffs or any of them.

(D) Because said alleged statute of the State of North Carolina upon which the rights of the plaintiffs are predicated, seeks to deprive this defendant of its liberty and property without due process of law, it is therefore in conflict with Section I of Article 14 of the Constitution of the United States and laws passed in pursuance thereof, and is therefore null, void and unenforcible and confers no right upon the plaintiffs or any of them.

(E) Because said alleged statute of the State of North Carolina is inconsistent and in conflict with the valid laws of the United States, which are the supreme law of the land and especially with a certain act of Congress, known as the Federal Reserve Act, and seeks to prevent or interfere with the operation of said laws, and the proper execution thereof, and is therefore null, void and unenforcible, and confers no rights upon the plaintiffs, or any of them.

(F) Because the said alleged statute of North Carolina seeks to interfere with, restrict or prevent, or to authorize the plaintiffs and the state banks and trust companies, organized under the State of North Carolina to interfer with, restrict or prevent the operation of the defendant, the Federal Reserve Bank of Richmond, a Federal agency, in the exercise of its powers and the discharge of its duties under the Constitution and laws of the United States, and is therefore null, void and

unenforcible, and confers no rights upon the plaintiffs, or any of them.

(G) That said alleged statute of the State of North Carolina, upon which the alleged rights of the plaintiffs are predicated undertakes to unreasonably interfere with, limit and restrict the rights of contract and other property rights of the defendant, and to the extent of its intended operation to deprive the defendant of rights of contract and other property rights under, or guaranteed and protected by the Constitution and laws of the United States, and the said statute is, therefore, null, void and unenforcible and confers no rights upon the plaintiffs, or any of them.

(H) The said bill is without equity for the further reason that it seeks to enjoin and restrain the defendant in the exercise of its lawful powers and the discharge of its duties as Federal agency, and as a corporation organized and existing under the valid laws of the United States, and is an effort to interfere with, restrict or limit the operation of said laws of the United States, which are the supreme laws of the land, and the operations of this defendant as an agency under and erected by said laws, and said bill cannot be maintained for that reason.

Wherefore, the defendant demands judgment that the plaintiffs take nothing by their action; that the Restraining Order heretofore issued be dissolved, that it go without day and recover its costs in this behalf expended.

W. G. WALLACE,
H. G. CONNOR, JR.,
H. W. ANDERSON,
Attorneys for Defendant.

State of Virginia—City of Richmond.

Personally appeared before me, W. A. Crenshaw, a Notary Public in and for the State and City aforesaid, Chas. A. Peple, who being duly sworn, deposes and says: That he is an officer

of the Federal Reserve Bank of Richmond, Virginia, the defendant herein, to-wit: The Deputy Governor thereof, and as such has the right to make this verification; that he has read the foregoing Answer and that the same is true of his own knowledge, except as to the matters and things therein stated upon information and belief, and as to those he believes it to be true.

CHAS. A. PEPLE.

Sworn to and subscribed before me, this 20th day of August, 1921.

W. A. CRENSHAW,
Notary Public.

(Notarial Seal.)

My commission expires Feb. 6, 1922.

After the institution of this action approximately 275 banks intervened and were properly made parties plaintiff, a list of the said banks being as follows:

PLAINTIFF BANKS IN INJUNCTION SUIT AGAINST FEDERAL RESERVE BANK OF RICHMOND.

Place of Business	Name
Aberdeen, N. C.	Merchants & Farmers Bank
Aberdeen, N. C.	Page Trust Co.
Ahoskie, N. C.	Farmers Atlantic Bank
Ahoskie, N. C.	Bank of Ahoskie
Andrews, N. C.	Merchants and Manufacturers Bank
Angier, N. C.	Angier Bank & Trust Co.
Arapahoe, N. C.	Bank of Pamlico
Askewville, N. C.	Farmers-Atlantic Bank
Atkinson, N. C.	Bank of Atkinson
Aulander, N. C.	Bank of Aulander
Aulander, N. C.	Farmers Bank
Avondale, N. C.	The Haynes Bank
Badin, N. C.	Bank of Badin
Bakersville, N. C.	Merchants & Farmers Bank
Banners Elk, N. C.	Banners Elk Bank

Place of Business	Name
Bayboro, N. C.	Bank of Pamlico
Beaufort, N. C.	Beaufort Bank & Trust Co
Beaufort, N. C.	Bank of Beaufort
Belhaven, N. C.	Bank of Belhaven
Bennett, N. C.	Bank of Bennett
Benson, N. C.	Citizens Bank & Trust Co.
Bessemer City, N. C.	Bessemer City Bank
Biscoe, N. C.	Bank of Biscoe
Black Creek, N. C.	Bank of Black Creek
Bladenboro, N. C.	Bank of Bladenboro
Blowing Rock, N. C.	Bank of Blowing Rock
Boiling Springs, N. C.	Boiling Springs Bank
Bonlee, N. C.	Bonlee Bank & Trust Co.
Boone, N. C.	Peoples Bank & Trust Co.
Boonville, N. C.	Commercial & Savings Bank
Bostic, N. C.	Bostic Bank
Broadway, N. C.	Bank of Broadway
Bridgeton, N. C.	Bank of Bridgeton
Buies Creek, N. C.	Bank of Buies Creek
Bunn, N. C.	Bunn Banking Co.
Burlington, N. C.	First Savings Bank
Burnsville, N. C.	Bank of Yancey
Cameron, N. C.	Bank of Cameron
Cameron, N. C.	Page Trust Co.
Candor, N. C.	Bank of Candor
Carrboro, N. C.	Bank of Canboro
Carthage, N. C.	Page Trust Co.
Carthage, N. C.	Bank of Moore
Cary, N. C.	Bank of Cary
Catawba, N. C.	Peoples Bank
Cerro Gordo, N. C.	Bank of Cerro Gordo
Chapel Hill, N. C.	Bank of Chapel Hill
Chapel Hill, N. C.	Peoples Bank
China Grove, N. C.	Bank of China Grove
Claremont, N. C.	Peoples Bank
Cleveland, N. C.	Citizens Bank
Cliffside, N. C.	The Haynes Bank
Clyde, N. C.	Bank of Clyde
Coats, N. C.	Bank of Harnett
Colerain, N. C.	Bank of Colerain
Colerain, N. C.	Peoples Bank & Trust Co.
Coleridge, N. C.	Bank of Coleridge
Columbus, N. C.	Polk County Bank & Trust Co.
Conover, N. C.	Citizens Bank
Conway, N. C.	Bank of Conway

Place of Business	Name
Dallas, N. C.	Bank of Dallas
Danbury, N. C.	Bank of Stokes County
Danbury, N. C.	Citizens Bank
Denver, N. C.	Farmers & Merchants Bank
Dover, N. C.	Bank of Dover
Duke, N. C.	Bank of Harnett
Dunn, N. C.	Commercial Bank
Dunn, N. C.	State Bank & Trust Co.
Efland, N. C.	Bank of Efland
Elk Park, N. C	Citizens Bank
Ellenboro, N. C.	Bank of Ellenboro
Ellerbe, N. C.	Bank of Ellerbe
Ellerbe, N. C.	Bennet Bank & Trust Co.
Elon College, N. C.	Elon Bank & Trust Co.
Enfield, N. C.	Commercial & Farmers Bank
Englehard, N. C.	Englehard Banking & Trust Co.
Eure, N. C.	Farmers Bank of Eure
Everetts, N. C.	Planters and Merchants Bank
Fair Bluff, N. C.	Farmers & Merchants Bank
Fletcher, N. C.	Bank of Fletcher
Franklinville, N. C.	Bank of Franklinville
Fuquay Springs, N. C.	Bank of Fuquay
Garner, N. C.	Garner Banking & Trust Co.
Garrysburg, N. C.	Merchants & Farmers Bank
Gates, N. C.	Citizens Bank
Gatesville, N. C.	Planters Savings Bank
Gatesville, N. C.	Bank of Gates
Germanton, N. C.	Bank of Stokes County
Gibson, N. C.	Carolina State Bank
Gibsonville, N. C.	Bank of Gibsonville
Goldston, N. C.	Bank of Goldston
Graham, N. C.	Citizens Bank
Granite Falls, N. C.	Bank of Granite
Granite Quary, N. C.	Farmers & Merchants Bank
Grimesland, N. C.	Bank of Grimesland
Grover, N. C.	Bank of Grover
Gulf, N. C.	City Bank & Trust Co.
Halifax, N. C.	Bank of Halifax
Hamilton, N. C.	Bank of Hamilton
Hamlet, N. C.	Page Trust Co.
Harrellsville, N. C.	Bank of Harrellsville
Haysville, N. C.	Clay County Bank
Haw River, N. C.	Bank of Haw River
Hemp, N. C.	Bank of Hemp
Henrietta, N. C.	The Haynes Bank

Place of Business	Name
Hickory, N. C.	First Security Trust Co.
Hickory, N. C.	Consolidated Trust Co.
Hillsboro, N. C.	Bank of Orange
Hillsboro, N. C.	Farmers & Merchants Bank
Hobgood, N. C.	Bank of Hobgood
Hollister, N. C.	Bank of Hollister
Holly Springs, N. C.	Bank of Holly Springs
Hookerton, N. C.	Bank of Hookerton
Hot Springs, N. C.	Citizens Bank
Jackson Springs, N. C.	Bank of Jackson Springs
Jacksonville, N. C.	Bank of Onslow
Jamesville, N. C.	Bank of Jamesville
Jonesboro, N. C.	Banking Loan & Trust Co.
Kelford, N. C.	Bank of Kelford
Kenansville, N. C.	Bank of Kenansville
Kenly, N. C.	Farmers Bank
Kenly, N. C.	Bank of Kenly
Kernersville, N. C.	Bank of Kernersville
King, N. C.	Bank of King
King, N. C.	Farmers & Merchants Bank
Landis, N. C.	Merchants & Farmers Bank
Lasker, N. C.	Bank of Lasker
Leaksville, N. C.	Bank of Leaksville
Lewiston, N. C.	Bank of Lewiston
Lexington, N. C.	Commercial & Savings Bank
Lexington, N. C.	Lexington Bank & Trust Co.
Liberty, N. C.	Bank of Liberty
Lillington, N. C.	Bank of Lillington
Lillington, N. C.	Harnett County Trust Co.
Littleton, N. C.	Bank of Littleton
Littleton, N. C.	Planters Bank
Lowell, N. C.	Bank of Lowell
Lucama, N. C.	Lucama Bank
Madison, N. C.	Bank of Madison
Madison, N. C.	Farmers Bank & Trust Co.
Magnolia, N. C.	Bank of Magnolia
Maiden, N. C.	Maiden Bank
Manteo, N. C.	Bank of Manteo
Marion, N. C.	Merchants & Farmers Bank
Mars Hill, N. C.	Bank of Mars Hill
Marshall, N. C.	Bank of French Broad
Marshall, N. C.	Citizens Bank
Marshville, N. C.	Bank of Marshville
Marshville, N. C.	Mutual Bank & Trust Co.

Place of Business	Name
Mayodan, N. C.	Bank of Mayodan
Maysville, N. C.	Maysville Banking & Trust Co.
McDonald, N. C.	Bank of McDonald
Micro, N. C.	Citizens Bank
Middlesex, N. C.	Middlesex Banking Co.
Midland, N. C.	Bank of Midland
Mocksville, N. C.	Bank of Davie
Mocksville, N. C.	Merchants & Farmers Bank
Moncure, N. C.	Banking Loan & Trust Co.
Monroe, N. C.	Farmers & Merchants Bank
Monroe, N. C.	Monroe Bank and Trust Co.
Mooresboro, N. C.	Bank of Mooresboro
Morehead City, N. C.	The Marine Bank
Mount Gilead, N. C.	Bank of Mount Gilead
Mount Holly, N. C.	Central Bank & Trust Co.
Mount Holly, N. C.	Mount Holly Bank
Murphy, N. C.	The Cherokee Bank
Murphy, N. C.	Bank of Murphy
Newland, N. C.	Avery County Bank
New London, N. C.	Peoples Bank & Trust Co.
Newport, N. C.	Bank of Newport
Newton, N. C.	Farmers & Merchants Bank
Norlina, N. C.	Bank of Warren
Northwilkesboro, N. C.	Bank of Northwilkesboro
Norwood, N. C.	Bank of Norwood
Oakboro, N. C.	Bank of Oakboro
Oak City, N. C.	Bank of Oak City
Old Fort, N. C.	Bank of Old Fort
Oriental, N. C.	Bank of Pamlico
Parkton, N. C.	Bank of Parkton
Parmele, N. C.	Parmele Bank & Trust Co.
Pilot Mountain, N. C.	Farmers Bank
Pine Level, N. C.	Bank of Pine Level
Pinetops, N. C.	Planters Bank
Pittsboro, N. C.	Bank of Pittsboro
Pittsboro, N. C.	Farmers Bank
Potecasi, N. C.	Bank of Potecasi
Powellsville, N. C.	Powellsville Bank
Princeton, N. C.	Merchants & Farmers Bank
Proctorville, N. C.	Bank of Proctorville
Raeford, N. C.	Bank of Hoke
Raeford, N. C.	Bank of Raeford
Raeford, N. C.	Page Trust Co.
Ramseur, N. C.	Bank of Ramseur

Place of Business	Name
Albemarle, N. C.	Stanly Bank & Trust Co.
Ashboro, N. C.	Ashboro Bank & Trust Co.
Belmont, N. C.	Bank of Belmont
Burlington, N. C.	Alamance Bank & Trust Co
Enfield, N. C.	Bank of Enfield
Fairmont, N. C.	Bank of Fairmont
Hamlet, N. C.	Bank of Hamlet
Hendersonville, N. C.	First Bank & Trust Co.
Jefferson, N. C.	Bank of Ashe
Lansing, N. C.	Bank of Lansing
Lexington, N. C.	Bank of Lexington
Morganton, N. C.	Bank of Morganton
Oxford, N. C.	Union Bank & Trust Co.
Pinehurst, N. C.	Bank of Pinehurst
Rockingham, N. C.	Farmers Bank
Roxboro, N. C.	Bank of Roxboro
Roxboro, N. C.	Peoples Bank
Sunbury, N. C.	Farmers Bank
Zebulon, N. C.	Bank of Zebulon
Randleman, N. C.	Peoples Bank
Richfield, N. C.	Peoples Bank & Trust Co.
Richlands, N. C.	Citizens Bank
Rich Square, N. C.	Bank of Rich Square
Robertsonville, N. C.	Bank of Robertsonville
Rockwell, N. C.	Bank of Rockwell
Roseboro, N. C.	Bank of Roseboro
Roseboro, N. C.	Coharie Bank of Roseboro
Rose Hill, N. C.	Bank of Rose Hill
Roxobel, N. C.	Bank of Roxobel
Roxobel, N. C.	Roanoke-Chowan Bank
Salemburg, N. C.	Bank of Salemburg
Saluda, N. C.	Bank of Saluda
Saluda, N. C.	Carolina State Bank
Sanford, N. C.	Banking Loan & Trust Co.
Sanford, N. C.	Bank of Sanford
Sanford, N. C.	Peoples Bank
Sanford, N. C.	Page Trust Co.
Seagroves, N. C.	Bank of Seagroves
Severn, N. C.	Bank of Severn
Siler City, N. C.	Citizens Bank & Trust Co.
Siler City, N. C.	Chatham Bank
Sparta, N. C.	Bank of Sparta

Place of Business	Name
Spruce Pine, N. C.	Bank of Spruce Pine
Stanfield, N. C.	Bank of Stanfield
Stanley, N. C.	Farmers & Merchants Bank
Stem, N. C.	Bank of Stem
Stokes, N. C.	Planters Bank
Stokesdale, N. C.	Stokesdale Commercial Bank
Stoneville, N. C.	Bank of Stoneville
Stoneville, N. C.	Farmers & Merchants Bank
Stony Point, N. C.	Bank of Stony Point
Summerfield, N. C.	Bank of Summerfield
Sylva, N. C.	Tuckaseigee Bank
Sylva, N. C.	Jackson County Bank
Tabor, N. C.	Bank of Whiteville
Tabor, N. C.	Farmers & Merchants Bank
Todd (Elkland), N. C.	Bank of Todd
Trenton, N. C.	Bank of Jones
Troutman, N. C.	Troutman Banking & Trust Co.
Troy, N. C.	Bank of Montgomery
Troy, N. C.	Troy Bank & Trust Co.
Turkey, N. C.	Bank of Turkey
Vass, N. C.	Bank of Vass
Vineland, N. C.	Bank of Columbus
Waco, N. C.	Peoples Bank
Wagram, N. C.	Bank of Wagram
Wake Forest, N. C.	Bank of Wake
Wallace, N. C.	Bank of Duplin
Wallace, N. C.	Farmers Bank & Trust Co.
Walnut Cove, N. C.	Bank of Stokes County
Walnut Cove, N. C.	Farmers Union Bank & Trust Co.
Warrenton, N. C.	Bank of Warren
Warrenton, N. C.	Citizens Bank
Warsaw, N. C.	Bank of Warsaw
Waxhaw, N. C.	Waxhaw Banking & Trust Co.
Weaverville, N. C.	Farmers & Traders Bank
Weldon, N. C.	Weldon Bank & Trust Co.
Whiteville, N. C.	Bank of Whiteville
Whiteville, N. C.	Bank of Columbus
Wilkesboro, N. C.	Bank of Wilkes
Williamston, N. C.	Farmers & Merchants Bank
Williamston, N. C.	Martin Co. Savings & Trust Co.
Williamston, N. C.	Peoples Bank
Wingate, N. C.	State Bank of Wingate
Winterville, N. C.	Bank of Winterville
Winton, N. C.	Bank of Winton

Place of Business	Name
Winton, N. C.	Merchants & Farmers Bank
Woodland, N. C.	Farmers Bank
Yadkinville, N. C.	Bank of Yadkin
Yanceyville, N. C.	Bank of Yanceyville

Whereupon, at a regular term of court begun and held at the court house, in the County of Union, on the second Monday before the first Monady in March, it being the twentieth day of February, 1922, with Honorable James L. Webb, Judge, riding and holding the courts of the Thirteenth Judicial District, of North Carolina, being present and presiding, said cause came upon to be heard and the following proceedings were had, the plaintiffs and defendant being each represented by counsel, a jury trial is waived and the issues of fact submitted to the court, and the court hears the evidence, the argument of counsel and renders a judgment in said cause as follows:

JUDGMENT.

North Carolina—Union County.
In the Superior Court—February Term, 1922.

(Title of Cause)

A jury having been waived in open court, the above stated case came on for trial in said court in due course before the undersigned judge thereof on February 27, 1922. Evidence was introduced and argument of counsel heard, and the court being fully advised in the premises, makes and enters the following findings of fact and conclusions of law, and decree of the court based thereon, to-wit:

STATEMENT OF THE CASE.

On the fifth of February, 1921, there became effective in the State of North Carolina, a statute, the caption of which was "An Act to Promote the Solvency of State Banks." This Act provides the following regulations:

1. It specifically authorizes and legalizes the charge of not

exceeding one-eighth of one per cent by State banking institutions for the remittance of the proceeds of checks.

2. It confers upon its State banking institutions the option of payment of checks drawn upon them in exchange drafts on the reserve deposits of said institutions; this option to be exercised in case checks on any such institutions are presented by or through (a) any Federal Reserve Bank; (b) the post office; (c) the express company.

3. It prohibits the modification of the contract expressed on the face of any check on these State institutions by any rubber stamp or other notation thereon other than by the drawee of the check.

4. The provisions of the Act are made inapplicable to checks on these State institutions drawn in payment of obligations due the State or National governments.

5. It forbids protest where remittances of proceeds at par is refused because the holder declines to pay exchange charges, and forbids suit upon such check in payment thereof in exchange is refused in cases where the option to make payment in exchange is conferred by the Act.

The above stated suit was filed because of an alleged violation of the provisions of this law by the Federal Reserve Bank of Richmond, and for other causes claimed to be alleged in plaintiffs complaint. Temporary restraining order was granted and the case now comes on for trial on motion for permanent injunction.

The defendant moves to dismiss the bill in the nature of a demurrer thereof, for the reason that it has not violated any of its rights and privileges. The grounds of said demurrer and defense may be reduced to the following propositions, namely:

That the statute referred to above is in violation of the Constitution of the United States;

1. Because it authorizes the tender in payment of debts of

other than gold or silver coin in violation of Section 10 of Article 1.

2. Because it violates the Fourteenth Amendment in that it confers upon State banking institutions special and peculiar privileges not granted to other persons within the jurisdiction of North Carolina.

3. That it violates the Fourteenth Amendment in that it deprives the defendant of its liberty and property without due process of law.

4. That it violates the Fourteenth Amendment in that it denies to the defendant the equal protection of the laws.

5. Because the Act of North Carolina is in conflict with the Federal Reserve Bank Act.

6. Because said Act of North Carolina interfers with the operation of the defendant Reserve Bank which is averred to be a Federal agency with certain powers and duties to perform under the Constitution and Laws of the United States.

7. Because the said Act of North Carolina unreasonably interferes with the right of contract and other property rights of the defendant guaranteed and protected by the Constitution and Laws of the United States, and for other causes and reasons presented to the court.

FINDINGS OF FACT.

1. That the plaintiff banks and each of them are corporations created and existing under the laws of North Carolina and at the time this bill was filed were engaged in the business of banking in said State, and were subject to the laws of the State affecting their said business.

2. That the defendant, The Federal Reserve Bank of Richmond, was and is a banking institution created and existing under the Act of Congress known as the Federal Reserve Act, and at the date of filing this bill was conducting a part of its

business in the State of North Carolina, and has appeared in said case and answered said bill.

3. That the letter of February 1, 1921, being plaintiffs' exhibit B, (a copy of which is attached) and addressed "To the Member Banks Addressed," was prepared and sent by the defendant to all the member banks in the Fifth Federal Reserve District; that the letter of February 7, 1921, being plaintiffs' exhibit C, (a copy of which is attached) was prepared and mailed by the defendant to all North Carolina non-member banks; that the letter of February 14, being plaintiffs' exhibit D, (a copy of which is attached), addressed "To Member Bank Addressed," was prepared and mailed by the defendant to all member banks in the Fifth Federal Reserve District; that the letter of February 11, being plaintiffs' exhibit E, (a copy of which is attached) and addressed "To the Member Banks of the Fifth Federal Reserve District," was prepared and mailed by the defendant to all member banks in the Fifth Federal Reserve District; that plaintiffs' exhibit F, being in Circular No. 45 dated June 12, 1916, was sent to all member banks of the Fifth Federal Reserve District; that plaintiffs' exhibit G, "Instructions for Collectors," was issued by the defendant and given to all collectors of the defendant in the Fifth Federal Reserve District; that plaintiffs' exhibit H, "Check Clearing and Collection," is a true copy of Regulation J promulgated by the Federal Reseve Board, and was sent by it to all Federal Reserve Banks in the United States and sent by the Federal Reserve Bank of Richmond to all member banks in the Fifth Federal Reserve District; defendant's exhibit No. 1 is Circular No. 45 and is the same as plaintiffs' exhibit F; that defendant's exhibit No. 2, dated May 25, 1921 and being addressed to "Editor, Southern Banker, Atlanta, Ga.," (a copy of which is hereto attached) was issued by the defendant and mailed to all member banks of the Fifth Federal Reserve District and to others; that defendant's exhibit No. 3, being dated November 6, 1920 and addressed to "Bank of Wilkes, Wilkesboro, N. C.," was prepared by the defendant and

sent to about one hundred and nine non-member banks in the State of North Carolina, which had refused to sign the par collection agreement and which did not agree to remit at par; that defendant's exhibit No. 4, dated November 6, 1920 and addressed to "Cabarrus Savings Bank, Albemarle, N. C.," (a copy of which is hereto attached), was prepared by the defendant and sent to about thirty-eight branches of the banks which had signed the par clearance collection agreement; that defendant's exhibit No. 5, being dated November 16, 1920 and addressed to "Planters Bank, Battleboro, N. C.," (a copy of which is hereto attached), was prepared by the defendant and mailed to about two hundred and thirteen banks which had not signed the par collection clearance agreement but which had said that they would remit at par when the Federal Reserve Bank of Richmond was in the position to collect checks on all other banks in North Carolina; that defendant's exhibit No. 6, being dated November 6, 1920, and addressed to "Home Savings Bank, Wilmington, N. C.," was prepared by defendant and sent to about one hundred and thirty-three banks which had not signed the agreement to remit at par, (a copy of which is attached hereto); that defendant's exhibit No. 7, being dated November 15, 1920 and addressed to "Bank of Wilkes, Wilkesboro, N. C.," (a copy of which is attached hereto), was prepared by the defendant and sent to a number of non-member banks in North Carolina which had not agreed to remit at par with the first letter containing checks upon such bank for collection; that defendant's exhibit No. 8, being dated respectively November 16th and 17th and addressed to the "Bank of Wilkes, Wilkesboro, N. C.," (copies of which are attached hereto) were two letters following up the letter of the defendant of November 15, and sent to a number of the same banks as the letter of November 15th was sent to; that defendant's exhibit No. 9, entitled "Statement of Cash Items Forwarded to Banks in the State of North Carolina in the Year 1921," which is a tabulated statement of the total amount in dollars of all checks forwarded by the defendant

to the National banks, the State member banks and to the non-member banks in North Carolina as taken from the records of the defendant; that defendant's exhibit No. 9-A is a sheet taken from the Federal Reserve Bulletin (published by the Federal Reserve Board) of January 1922 containing a table showing the number of member and non-member banks in each Federal Reserve District December 15, 1921 and December 15, 1920; all of the above recited exhibits are introduced in evidence.

4. On or before November 15, 1920, the defendant had sent representatives to visit each of the plaintiff banks and a number of other non-member banks in the State of North Carolina and had requested them to remit at par without deductions for exchange for all checks which the defendant might receive for collection drawn upon such non-member State banks, and that at the time of such visits stated to each of such banks that it would accept in settlement for checks so sent to them their drafts drawn upon balances to their credit with their reserve correspondents, provided such drafts were drawn upon banks in the cities of Richmond, Baltimore, Philadelphia, or New York, which checks could be collected by the defendant in one day, or upon member banks in the Fifth Federal Reserve District, provided such checks bore the Immediate Credit Symbol (that is to say a symbol placed upon such drafts by consent of the member banks upon which such drafts are drawn, authorizing the defendant to charge such checks against the reserve deposit of the drawee bank maintained with the defendant); and the representatives of the defendant then stated that if such non-member banks would not remit at par for checks upon them, such checks would be presented at their respective counters and payment in money demanded.

5. In accordance with this plan, the defendant caused to be inserted on a par list issued by it and other Federal Reserve Banks the statement to the effect that on and after November 15th it would collect at par any check sent to it for collection by any of its member banks, or any other Federal

Reserve Bank, drawn upon any bank in the State of North Carolina.

The said par list was a list showing the names of banks or indicating the banks upon which the defendant and other Federal Reserve Banks were prepared to collect checks at par and were circulated by the defendant and other Federal Reserve Banks.

6. That after November 15, 1920 and until the injunction in this action was served the defendant did receive checks on all banks in the State of North Carolina for collection and, when such checks were drawn against any non-member bank within the State of North Carolina which would not and did not remit at par when checks drawn upon such banks were sent to them through the mail by the defendant, the defendant caused such checks to be presented to the banks so declining to remit at par at their respective counters and demanded payment in money, unless such bank would thereafter agree to remit at par through the mails; and, after granting of this injunction, such course was continued except as to banks which were or became parties to this action.

7. That the publication of the State of North Carolina and all banks therein on what is known as the par list of November 15, 1920 caused very nearly all checks drawn upon non-member banks in North Carolina and sent to persons out of the town and cities in which the banks were located to come into the hands of the defendant for collection.

8. Subsequent to the ratification of Chapter 20 of the Public Law of North Carolina of 1921, and prior to the issuance of the injunction herein or to the time at which the Bank of Pamlico and the Bank of Orange became parties, the defendant presented to certain of the plaintiff banks, to-wit: Page Trust Company, Aberdeen, N. C., (transcript of testimony pages 3 and 4), Bank of Pamlico, at Bayboro, N. C., and at Oriental, N. C. (transcript of testimony page 31), and the Bank of Orange, Hillsboro, N. C., (transcript of testimony

page 39), certain checks drawn upon each of the said banks by their depositors and demanded payment thereof in currency. The said plaintiff banks refused to pay the said checks in currency when so presented at their respective banking houses during usual business hours by a representative or agent of the Federal Reserve Bank of Richmond, and certain plaintiffs offered to pay the said checks as follows: The Page Trust Company offered to pay said checks so presented to it by means of its draft drawn upon the National Park Bank, New York, which draft was for the full face amount of all checks so presented and was drawn against money on deposit to the credit of the Page Trust Company at the National Park Bank, New York, and was collectible at par by the defendant without any deduction for exchange; the Bank of Pamlico, at Bayboro, and at Oriental, and the Bank of Orange, at Hillsboro, offered to pay all checks presented to it by the representative of the defendant at its banking house during usual business hours by means of a draft or drafts of such plaintiff banks of the kind specified in Chapter 20 of the Public Laws of North Carolina of 1921. The defendant refused the exchange drafts of the above mentioned plaintiffs so offered to it, demanding payment in money thereof. Thereupon the defendant stamped upon the face of each of these checks an inscription reading as follows:

"------------------------------

"This check was on the above date presented to the drawee bank at its office by a duly authorized agent of the Federal Reserve Bank of Richmond, and payment in *money* demanded, which was refused, the drawee claiming the right to discharge its obligation by its own draft. Notify all prior parties of the dishonor of this check.

FEDERAL RESERVE BANK OF RICHMOND."

And returned or stated that it would return such checks to the banks from which they had been received with the said inscription upon them.

9. That the defendant intended to pursue a like course i respect to other banks of the State of North Carolina whic were not members of the Federal Reserve System and whic would refuse to remit at par for checks sent to them throug the mails and which would refuse to pay in money chec upon them which presented at their banking houses durin usual business hours by a duly authorized agent of the d fendant.

10. That the checks drawn on the Page Trust Compan the Bank of Pamlico, the Bank of Orange, the Bank of Pol ton, the Bank of Stanfield, and such other of the plainti banks as appear from the evidence herein, which were se to the defendant for collection, were as expeditiously as po sible under all the circumstances given or sent by the defen ant to its collectors, and were by such collectors presented the several banks upon which they were drawn without u necessary or unreasonable delay, and without permitting su checks to accumulate in the hands of the defendant, and the was no saving up of checks drawn on the plaintiff or eith of them by the defendant.

11. That the cost of presenting checks for collection by c lectors at the counters of the banks upon which the chec were drawn was greater than the cost of sending the sa through the mails for collection and in many cases would greater than the exchange which such banks would recei under the statute.

12. That some of the plaintiffs did not consent to havi their names appear upon the par list and all of the plainti have withdrawn any consent, if any were given, to the inclusi of their names upon the par list.

13. That a considerable portion of the income of the pla tiff banks has hitherto been derived from exchange char made by them for remitting for checks drawn by their positors upon such banks, which revenue they will lose if su banks remit at par through the defendant or otherwise.

14. That if the defendant is permitted to collect checks drawn by their depositors upon the plaintiffs, at par, the plaintiffs will be compelled to carry deposits in banks against which the defendant will accept their drafts or to carry currency in their vaults sufficient to pay such checks when presented at their respective counters.

15. That the holding of currency in the vaults of the plaintiffs, or either of them, with which to pay checks presented at their counters by the defendant will materially decrease the earnings of such of the plaintiffs as should follow this course.

16. That said publication of the said par lists in so far as they include the plaintiff banks was at the time this bill was filed without their consent.

17. After the publication of plaintiffs in said excepted class, defendant did not receive checks on plaintiffs banks and had no duty to perform with respect to same, except in the few cases of checks coming in before the publication of said excepted class, and as to these few cases, the checks were returned by defendant to the banks sending them in, as it had a right to do.

18. If the plans and purposes of defendant are carried out the plaintiff banks will be deprived of all revenues derived from the service of remitting the proceeds of checks from one place to another; or else their orderly business will be so deranged by having to carry excessive cash reserves in their vaults as to diminish their lending power in their several communities and threaten their continued success and solvency.

19. The natural and necessary effect of including plaintiff banks in the published par lists of the Federal Reserve System, including defendant, is to accumulate in the hands of defendant practically all checks drawn on plaintiff banks that circulate outside their respective places of business.

20. The convergence and accumulation of such checks in the hands of defendant delays their presentation to the banks on which drawn beyond the time required for presentation through the mails in accordance with prevailing practices obtaining between commercial banks and this delay results in greater accumulation of such checks than would otherwise occur.

21. The defendant refused to comply with the provisions of said Act of February 5, 1921 from the date it became a law of North Carolina up to the operation of the restraining order in this case, and the court finds that defendant intended to continue violating said law in case said restraining order had not issued, and will resume its violation thereof unless injunction is granted as prayed for in this bill.

22. The refusal of defendant to comply with said law of North Carolina will inflict irreparable injury and damage upon plaintiffs for which no adequate remedy at law exists because the said injury and damage is not capable of ascertainment either as to the place where it occurs, or as to the persons through whom such injurious results operate, or as to the monied measure of such damage.

23. That the acts and things done by the defendant as shown herein were done and performed solely with the object and with the intent to discharge what the defendant was advised and believed to be its legal duties and obligations under the act of Congress, and the said defendant was not actuated by any motive or purpose to cause any unnecessary injury or loss to the plaintiff banks, or any of them.

CONCLUSIONS OF LAW.

1. The act of the Legislature of North Carolina of February 5, 1921, is a valid and constitutional law.

2. Plaintiffs have the legal right to charge for the service

of remitting the proceeds of checks from one place to another, not exceeding the rates fixed by said act.

3. Tender of payment of checks drawn on plaintiffs of exchange drafts under the terms and provisions of said Act of February 5th, 1921, does not amount to dishonor of said checks if such tender is refused.

4. The holder of any such check who declines to accept an exchange draft for the amount thereof tendered under the terms and conditions of said Act of February 5, 1921, has no legal right to publish and declare said check to have been dishonored.

5. Under the foregoing findings of fact and conclusions of law the plaintiffs are entitled to the relief set forth in the following:

DECREE.

Whereupon, it is considered, ordered, adjudged and decreed:

1. The defendant, Federal Reserve Bank of Richmond, is hereby permanently enjoined from refusing to accept exchange drafts when tendered by plaintiff banks in payment of checks drawn on them under the option given plaintiff banks under the provisions of said Act of February 5th, 1921.

2. The said defendant is likewise enjoined from returning as dishonored any check, payment for which in exchange drafts by plaintiff banks, or either of them, has been tendered under the provisions of said act and defendant refuses to accept the same.

3. The said defendant is likewise enjoined from protesting for non-payment any check, payment for which in exchange drafts by plaintiff banks, or either of them, has been tendered under the provisions of said act and defendant refuses to accept the same.

4. The said defendant is likewise enjoined from publishing

or authorizing the publication of the name of any of the plaintiff banks, literally or by inclusion, in any list or other publication designed for circulation among banking institutions generally, regardless of the name employed to designate such list or publication unless and until the bank thus published or included shall have previously given its consent to such publication.

To this judgment defendant excepts and appeals to the Supreme Court. Notice of appeal waived. Appeal bond fixed at $100.

JAS. L. WEBB,
Judge holding the Court in the 13th District.

DEFENDANT'S, FEDERAL RESERVE BANK OF RICHMOND, EXCEPTIONS.

1. The defendant, the Federal Reserve Bank of Richmond, excepts to that part of finding of fact No. 17, in which his Honor found as a fact "After the publication of plaintiffs in said excepted class, the defendant did not receive checks on plaintiff banks and had no duty to perform with respect to same," for that whether or not the defendant had any duty to perform in this respect is not a question or conclusion of fact, but a question or conclusion of law; and as a conclusion of law his Honor erred, for that he should have found that under the provisions of the Federal Reserve Act it was the duty of the defendant bank to accept from its member banks checks on the plaintiffs and to collect the same.

2. The defendant excepts to that part of findings of fact No. 18, as follows: "Or else their orderly business will be so deranged by having to carry excessive cash reserves in their vaults as to diminish their lending power in their several communities and threaten their continued success and solvency," for that the findings of fact is not supported by the evidence in the case and there is no evidence in the case from which said findings of fact could be made.

3. The defendant excepts to finding of fact No. 19, for that the said finding of fact is not supported by the evidence in the case and there is no evidence in the case from which it could be found as a fact that it was natural and necessary effect of including the plaintiff banks in the published par lists, that all checks drawn on the plaintiff banks, circulated outside their respective places of business, would accumulate in the hands of the defendant.

4. The defendant excepts to finding of fact No. 20, for that the court erred in finding that the convergence of checks in the hands of the defendant delayed their presentation to the drawee banks beyond the time required for presentation through the mails in accordance with the prevailing practices obtaining between commercial banks and this delay resulted in a greater accumulation of such checks than would otherwise occur; for that finding is contrary to the evidence, and that there is no evidence to sustain such finding.

5. The defendant excepts to his Honor's conclusion of law No. 1; for that his Honor should have held that the act of the Legislature of North Carolina of February 5, 1921, is not a valid and constitutional law, but that said act was in contravention and violation of the Constitution of the United States; and the amendments thereto and laws passed in pursuance thereof and especially those provisions of said Constitution, amendments, and laws specified in detail in defendant's answer in this cause.

6. The defendant excepts his Honor's conclusion of law No. 2; for that his Honor should have held that the plaintiffs did not have the legal right to make a charge, not exceeding the rates fixed by the said act, for remitting through the mails the proceeds of checks from one place to another.

7. The defendant excepts his Honor's conclusion of law No. 3; for that his Honor should have held that the tender in payment for checks drawn on the plaintiffs, of exchange drafts under the terms and provisions of the act of February 5, 1921,

and the refusal to pay the said checks in cash when cash is demanded, was a dishonor of such checks.

8. The defendant excepts his Honor's conclusion of law No. 4; for that his Honor should have held that the holder of any check, the payment of which is refused in cash or legal currency by the drawee bank, was a dishonor of such check, and that the holder thereof had the legal right to publish and declare such check to have been dishonored and to protest the same.

H. G. CONNOR, JR.,
H. W. ANDERSON,
M. G. WALLACE,
C. W. TILLETT, JR.,
Attorneys for Defendant, Federal Reserve Bank of Richmond

CASE ON APPEAL.

The case on appeal as agreed upon is as follows:

North Carolina—Union County.
In the Superior Court.

(Title of Cause.)

This was a civil action commenced in the Superior Court of Union County for the purpose of procuring an injunction. The contentions of the parties are set out in the pleadings which are sent up as a part of the record proper. After the granting of a temporary injunction the cause came on for final hearing before his Honor Judge James L. Webb at February Term 1922 of Union Superior Court. The parties waived trial by jury and consented that the matter be heard at large by the presiding Judge.

The following was all the evidence introduced:

The plaintiffs offer in evidence the record of the Federal Court on the motion to remand, and it is agreed between the parties that before the time of answering expired the defendant filed with the District Court of the United States for the

Western District of North Carolina a duly certified transcript of the record in this cause and asked that the Federal Court take jurisdiction thereof. That the plaintiffs then entered an appearance in the District Court of the United States for the Western District of North Carolina and moved that the cause be remanded to the Superior Court of Union County, North Carolina, on the ground that the Federal Court had no jurisdiction of the cause. That this motion came on for hearing before Hon. E. Y. Webb, Judge of the District Court of the United States for the Western District of North Carolina in June, 1921, and was duly heard and that an order was entered remanding the cause to the Superior Court of Union County. That the record and the order remanding the cause were duly certified to this court.

It is further agreed that either party hereto may print in the record on appeal any part of the proceedings for remanding and the order to remand.

It is also agreed between counsel that the form of the proceedings and the time of the motions to remand and the order remanding were in all respects regular and in accordance with the Acts of Congress.

EXHIBIT B.

FEDERAL RESERVE BANK OF RICHMOND

Par Clearance in the State of North Carolina

February 1, 1921.

To the member Bank addressed:

We enclose herewith a copy of an amended Bill, introduced in the Legislature of the state of North Carolina, which may shortly become a law. You will see by its terms that the Bill authorizes non-member State banks to deduct an exchange charge when remitting for checks sent them; and, if the checks are presented through an express company, a post office, or a Federal Reserve bank, to refuse payment in cash and tender exchange in settlement, even

though the check is presented by an agent in person at the counter of the drawee bank. The Act also prohibits any notary from protesting any check if the drawee bank refuses to pay cash and tenders exchange.

Counsel for this Bank is of the opinion that such a law would be unconstitutional; and that, therefore, in accordance with the decision of the United States Circuit Court of Appeals in an injunction suit brought by the State banks of Georgia against the Federal Reserve Bank of Atlanta, if this Bill becomes a law, it will still be the duty of the Federal Reserve Bank of Richmond, under the Federal Reserve Act and the Regulations of the Board, to accept for collection checks drawn upon non-member State banks in North Carolina, sent to it by its member banks and other Federal Reserve banks, and to collect these checks at par, if possible, since under the above decision of the United States Circuit Court and the opinion of the Attorney General of the United States, Federal Reserve banks cannot agree to permit a deduction for exchange.

If this Bill is enacted and any non-member State banks (relying upon it) refuse to remit at par for checks sent them by us, we will decline to permit any deduction for exchange, and will, as soon as it is practicable to do so, present all checks upon them at their counters by agents and demand payment in lawful money. If payment in cash is refused, we will decline to accept an exchange draft, and will return all checks upon which payment is refused with a proper notice of dishonor in lieu of formal protest. The proposed law does not make it obligatory upon non-member banks to deduct exchange in remitting, or to tender exchange drafts in payment of checks when presented by a Federal Reserve bank, express company, or the post office, but simply authorizes them to take that action.

It is impossible to foresee how many State banks in

North Carolina may attempt to take advantage of this law, if and when enacted. To provide for that contingency and for the fullest protection of our member banks, we deem it advisable to notify them in advance of the course we shall feel called upon to pursue, and to advise them that there may be some unusual delay in presenting checks by agents at the counters of those banks which refuse to remit at par. Consequently, we wish to notify all of our correspondents that while we will continue to receive, if sent to us for collection, all checks upon non-member State banks listed upon our par list and will present such checks as soon as practicable, we cannot be responsible for the delays occasioned by our inability to procure agents to make presentation at the counters of the drawee banks within the usual time; nor can we be responsible for the failure to procure a formal protest of such checks if payment in cash is refused.

Respectfully,

FEDERAL RESERVE BANK OF RICHMOND.

PLAINTIFFS EXHIBIT C.

FEDERAL RESERVE BANK OF RICHMOND

February 7, 1921.

To the North Carolina Non-member Bank addressed:

On November 15 last, North Carolina became an "all par" State, which means that checks on every bank in the State became collectible at their face value through Federal Reserve banks. On November 17 last, there was held at Greensboro a called meeting of the North Carolina Bankers Association, at which time an organization was formed for the purpose of combating and defeating in the State of North Carolina the Par Collection Plan now in operation with banks comprising about 98 per cent of the banking resources of the country.

The North Carolina Legislature, now in session in Ral-

eigh, has just passed an Act entitled: "An Act to Promote Solvency of State Banks." Section I, of the Act provides that it shall be lawful for all banks and trust companies in the State to charge a fee, not in excess of one-eighth of one per cent., on remittances covering checks. Section II. provides:

> "All checks drawn on said banks and trust companies shall, unless specified on the face thereof to the contrary by the maker or makers thereof, be payable at the option of the drawee bank in exchange drawn on reserve deposits of said bank, when such checks are presented by or through any Federal Reserve bank, post office, or express company, or any respective agents thereof."

A careful study of the Act will show that the Legislature intended to make it lawful to charge exchange when remittance is made by mail, but provides that when a Federal Reserve bank or its agent presents checks at the counter of the drawee bank, the drawee bank may, at its option, pay by draft on its correspondent instead of in cash, but does not provide for deduction of exchange under such circumstances. It is not obligatory upon State banks to deduct exchange in remitting, or to pay by drafts on correspondents when presented by any Federal Reserve bank, post office, or express company or any respective agents thereof. The Act seeks to permit them to take action.

The non-member banks are encouraged to believe that the enactment of such a State law will result in restoring to them the right to charge exchange in all cases when paying checks on themselves, notwithstanding the fact that the Act of Congress and the decision of the United States Circuit Court of Appeals, in the injunction suit brought by certain State banks in Georgia against the Federal Reserve Bank of Atlanta, places upon the Federal Reserve

banks the duty of receiving and collecting at Par checks on non-member banks, as well as on member banks.

In view of the peculiar situation which has arisen as a result of the passage of this Act, we feel called upon to define the position of the Federal Reserve Bank of Richmond.

We have been, and are now, paying postage on remittances from non-member banks and accepting their drafts on correspondents in payment of checks upon themselves, which is the identical character of funds which Section 11 of the Act authorizes you to pay us when we present checks at your counter. We also now pay transportation charges when you elect to remit us in cash. The Act will, therefore, not confer any privilege of payment as to the character of funds which you do now possess. Then, why not continue to send us exchange drafts by mail, using the stamped, addressed envelope which is furnished you with every cash letter? We believe it will be to your interest to do this because it is indisputably to the interest of your customers.

In the event you should not be willing to remit us at par by mail, we will be forced to present checks at your counter for payment in cash only. Should payment in cash be refused, we will promptly return the checks to the banks from which we receive them, with a plain statement that the checks were presented by a personal representative of this bank and payment in money refused, and a proper notice of dishonor will be attached to the checks in lieu of formal protest. All checks upon which payment has been refused will, in due course, be returned to the drawer, your customer, who will then know you have refused to pay his check in money, in conformity with universal custom, and with requirement of law, as we believe. We will feel called upon to continue to do this thing as long as you make it necessary.

We are satisfied that state legislatures have not the

power to make a check drawn by one bank upon another legal tender. If one check may be paid with another, then actual payment is in danger of being defeated altogether in some cases. This is a dangerous power to attempt to confer and is against the public interest, in our opinion, and the Act is unconstitutional in the opinion of our counsel.

We are, of course, anxious to discharge our duties under the Federal Reserve Act with the least possible friction, and we will appreciate it very much if you will advise us (using the enclosed stamped, addressed envelope) whether you will or will not continue to remit us at par by mail for checks on your Bank; or will you require us to present the checks at your counter, in which case we can accept payment only in cash:

Your careful consideration of this letter and your prompt reply will be appreciated.

Respectfully,

FEDERAL RESERVE BANK OF RICHMOND.

AGREEMENT TO REMIT AT PAR

Federal Reserve Bank,

Richmond, Va.

Gentlemen:

We agree to remit you at par on day of receipt for all checks drawn on this bank, which may be sent us by you, in either Richmond, Baltimore, Philadelphia, or New York exchange, or by a draft on our member bank correspondent bearing the "I. C." symbol of this district, or by shipment of currency at your expense.

Yours very truly,

(Name of bank and location.)

By---

(Officer.) *(Title.)*

Date---

REFUSAL TO REMIT AT PAR

Federal Reserve Bank,
Richmond, Va.

Gentlemen:

We will not remit you at par on day of receipt for all checks drawn on this bank, which may be sent us by you, in either Richmond, Baltimore, Philadelphia, or New York exchange, or by a draft on our member bank correspondent bearing the "I. C." symbol of this district, or by shipment of currency at your expense.

Yours very truly,

....

(Name of bank and location.)

By..

(Officer.) *(Title.)*

Date..

It is admitted that Exhibit "D" is a circular letter (February 14, 1921) sent out to the member banks by the Federal Reserve Bank of Richmond, Virginia, which letter is introduced in evidence for all purposes for which it might be competent, and particularly for the purpose of showing the admission by the Federal Reserve Bank of Richmond that, in the case of non-member State banks which refused to remit at par, the defendant presented checks upon them at their counters and demanded payment in money and refused to accept payment in exchange of checks so presented, and also for the purpose of showing that when the Federal Reserve Bank was enjoined from returning as dishonored checks for which payment in exchange had been tendered it refused to accept checks on the banks so protected by the injunction.

FEDERAL RESERVE BANK OF RICHMOND

PAINTIFFS EXHIBIT D.

Re Injunction restraining the Federal Reserve Bank of

Richmond from returning as dishonored checks on certain banks.

February 14, 1921.

To the Member Bank addressed:

On February 5, the Bill entitled "An Act to Promote Solvency of State Banks," a copy of which was sent you in our circular letter of February 1, became a law in North Carolina. As we stated in our letter, we continued to receive checks upon all non-member state banks in North Carolina, and we are pleased to say that many such banks have assured us of their intention to continue to remit at par for all checks sent them through us, and the majority of non-member state banks from whom we have no positive assurance are yet remitting at par. In the case of those non-member state banks which have refused to remit at par we presented checks upon them at their counters and demanded payment in money and refused to accept payment in exchange of checks so presented.

Thirteen non-member state banks, a list of which is attached to this letter, have instituted a suit against us seeking to enjoin us from returning as dishonored any check drawn upon them, or upon any other non-member state banks which may join in the suit, which check the drawee bank is willing to pay in exchange. The Superior Court for Union County, N. C., has awarded a temporary restraining order, by the terms of which we are restrained from returning as dishonored any checks drawn since February 5, 1921, upon the plaintiffs in the suit, if the plaintiffs have tendered us their change drafts in payment.

We shall move the Court to disolve this injunction, but in the meantime, because of the temporary restraining order we cannot undertake to present checks drawn since February 5, 1921, upon the banks which are parties to this suit. The order, however, applies only to checks since February 5, 1921, drawn upon the plaintiffs in the suit. We will, therefore, continue to receive for collection checks

on the plaintiffs in the suit, provided the checks are dated on or before February 5, 1921, and will continue to receive checks on all banks in North Carolina who have not actually become parties to the suit. Should any banks other than those listed below be made parties to the suit, or should any banks which have joined in the suit thereafter agree to remit at par, we will promptly advise all member banks.

Very truly yours,
FEDERAL RESERVE BANK OF RICHMOND.

PLAINTIFFS EXHIBIT E.

FEDERAL RESERVE BANK OF RICHMOND

It is admitted that Exhibit "E" is a circular which was sent out by the Federal Reserve Bank of Richmond to its members and their branches in the Fifth Federal Reserve District. The letter marked Exhibit "E" is introduced in evidence.

Plaintiff banks in Injunction Suit against Federal Reserve Bank of Richmond, checks on which we are restrained from handling. This list does not include the names of a number of banks which are plaintiffs in the Suit, but which have agreed to remit at par.

(Revised lists will be published from time to time.)

June 21, 1921.

Place of Business	Name
Aberdeen, N. C.	Merchants & Farmers Bank
Aberdeen, N. C.	Page Trust Co.
Ahoskie, N. C.	Farmers-Atlantic Bank
Andrews, N. C.	Merchants and Manufactures Bank
Angier, N. C.	Angier Bank & Trust Co.
Araphoe, N. C.	Bank of Pamlico
Askewville, N. C.	Farmers-Atlantic Bank
Atkinson, N. C.	Bank of Atkinson

Place of Business	Name
Aulander, N. C.	Bank of Aulander
Aulander, N. C.	Farmers Bank
Avondale, N. C.	The Haynes Bank
Badin, N. C.	Bank of Badin
Banners Elk, N. C.	Banners Elk Bank
Bayboro, N. C.	Bank of Pamlico
Beaufort, N. C.	Beaufort Banking & Trust Co.
Belhaven, N. C.	Bank of Belhaven
Bennett, N. C.	Bank of Bennett
Bessemer City, N. C.	Bessemer City Bank
Biscoe, N. C.	Bank of Biscoe
Black Creek, N. C.	Bank of Black Creek
Bladenboro, N. C.	Bank of Bladenboro
Boiling Springs, N. C.	Boiling Springs Bank
Bonlee, N. C.	Bonlee Bank & Trust Co.
Boone, N. C.	Peoples Bank & Trust Co.
Boonville, N. C.	Commercial & Savings Bank
Bostic, N. C.	Bostic Bank
Broadway, N. C.	Bank of Broadway
Bridgeton, N. C.	Bank of Bridgeton
Buies Creek, N. C.	Bank of Buies Creek
Bunn, N. C.	Bunn Banking Co.
Burlington, N. C.	Alamance Bank & Trust Co.
Burlington, N. C.	First Savings Bank
Burnsville, N. C.	Bank of Yancey
Cameron, N. C.	Bank of Cameron
Candor, N. C.	Bank of Candor
Carrboro, N. C.	Bank of Carrboro
Carthage, N. C.	Page Trust Co.
Carthage, N. C.	Bank of Moore
Cary, N. C.	Bank of Cary
Catawba, N. C.	Peoples Bank
Cerro Gordo, N. C.	Bank of Cerro Gordo
Chapel Hill, N. C.	Bank of Chapel Hill
Chapel Hill, N. C.	Peoples Bank
China Grove, N. C.	Bank of China Grove
Claremont, N. C.	Peoples Bank
Cleveland, N. C.	Citizens Bank
Cliffside, N. C.	The Haynes Bank
Clyde, N. C.	Bank of Clyde
Coats, N. C.	Bank of Harnett
Coleraine, N. C.	Bank of crolerain
Coleraine, N. C.	Peoples Bank & Trust Co.
Coleridge, N. C.	Bank of Coleridge

Place of Business	Name
Columbus, N. C.	Polk County Bank & Trust Co.
Conover, N. C.	Citizens Bank
Conway, N. C.	Bank of Conway
Dallas, N. C.	Bank of Dallas
Danburry, N. C.	Bank of Stokes County
Danburry, N. C.	Citizens Bank
Denton, N. C.	Bank of Denton
Denver, N. C.	Farmers & Merchants Bank
Dover, N. C.	Bank of Dover
Duke, N. C.	Bank of Harnett
Dunn, N. C.	Commerical Bank
Dunn, N. C.	State Bank & Trust Co.
Efland, N. C.	Bank of Efland
Elk Park, N. C.	Citizens Bank
Ellerbee, N. C.	Bank of Ellerbee
Ellerbee, N. C.	Bennett Bank & Trust Co.
Elon College, N. C.	Elon Bank & Trust Co.
Enfield, N. C.	Commerical & Farmers Bank
Englehard, N. C.	Englehard Banking & Trust Co.
Eure, N. C.	Farmers Bank of Eure
Everetts, N. C.	Planters and Merchants Bank
Fair Bluffs, N. C.	Farmers & Merchants Bank
Fletcher, N. C.	Bank of Fletcher
Franklinville, N. C.	Bank of Franklinville
Fuquay Springs, N. C.	Bank of Fuquay
Garysburg, N. C.	Merchants & Farmers Bank
Gates, N. C.	Citizens Bank
Gatesville, N. C.	Planters Savings Bank
Gatesville, N. C.	Bank of Gates
Germanton, N. C.	Bank of Stokes County
Gibson, N. C.	Carolina State Bank
Gibsonville, N. C.	Bank of Gibsonville
Goldston, N. C.	Bank of Goldston
Graham, N. C.	Citizens Bank
Granite Falls, N. C.	Bank of Granite
Granite Quarry, N. C.	Farmers & Merchants Bank
Grimesland, N. C.	Bank of Grimesland
Gulf, N. C.	City Bank & Trust Co.
Halifax, N. C.	Bank of Halifax
Hamilton, N. C.	Bank of Hamilton
Hamlet, N. C.	Page Trust Co.
Harrellsville, N. C.	Bank of Harrellsville
Haysville, N. C.	Clay County Bank
Haw River, N. C.	Bank of Haw River
Hemp, N. C.	Bank of Hemp

Place of Business	Name
Henrietta, N. C.	The Haynes Bank
Hickory, N. C.	First Security Trust Co.
Hickory, N. C.	Consolidated Trust Co.
Hillsboro, N. C.	Bank of Orange
Hillsboro, N. C.	Farmers & Merchants Bank
Holly Springs, N.C.	Bank of Holly Springs
Hookerton, N. C.	Bank of Hookerton
Hot Springs, N. C.	Citizens Bank
Jackson Springs, N. C.	Bank of Jackson Springs
Jacksonville, N. C	Bank of Onslow
Jamesville, N. C.	Bank of Jamesville
Jonesboro, N. C.	Banking Loan & Trust Co.
Kelford, N. C.,	Bank of Kelford
Kenansville, N. C.	Bank of Kenansville
Kenly, N. C.	Farmers Bank
Kenly, N. C.	Bank of Kenly
Kernersville, N. C.	Bank of Kernersville
King, N. C.	Bank of King
King, N. C.	Farmers & Merchants Bank
Knightdale, N. C.	Bank of Knightdale
Landis, N. C.	Merchants & Farmers Bank
Lasker, N. C.	Bank of Lasker
Leaksville, N. C.	Bank of Leaksville
Lewistown, N. C.	Bank of Lewiston
Lexington, N. C.	Commerical & Savings Bank
Lexington, N. C.	Lexington Bank & Trust Co.
Liberty, N. C.	Bank of Liberty
Lillington, N. C.	Bank of Lillington
Lillington, N. C.	Harnett County Trust Co.
Littleton, N. C.	Bank of Littleton
Littleton, N. C.	Planters Bank
Lowell, N. C.	Bank of Lowell
Lucama, N. C.	Lucama Bank
Madison, N. C.	Bank of Madison
Madison, N. C.	Farmers Bank & Trust Co.
Magnolia, N. C.	Bank of Magnolia
Maiden, N. C.	Maiden Bank
Manteo, N. C.	Bank of Manteo
Marion, N. C.	Merchants & Farmers Bank
Mars Hill, N. C.	Bank of Mars Hill
Marshall, N. C.	Bank of French Broad
Marshall, N. C.	Citizens Bank
Marshville, N. C.	Bank of Marshville
Marshville, N. C.	Mutual Bank & Trust Co.
Mayodan, N. C.	Bank of Mayodan

Place of Business	Name
Maysville, N. C.	Maysville Banking & Trust Co.
Micro, N. C.	Citizens Bank
Middlesex, N. C.	Middlesex Banking Co.
Midland, N. C.	Bank of Midland
Mocksville, N. C.	Bank of Davie
Mocksville, N. C.	Merchants & Farmers Bank
Moncure, N. C.	Banking Loan & Trust Co.
Monroe, N. C.	Farmers & Merchants Bank
Mooresboro, N. C.	Bank of Mooresboro
Mount Holly, N. C.	Central Bank & Trust Co.
Mount Holly, N. C.	Mount Holly Bank
Newland, N. C.	Avery County Bank
New London, N. C.	Peoples Bank & Trust Co.
Newport, N. C.	Bank of Newport
Newton, N. C.	Farmers & Merchants Bank
Norlina, N. C.	Bank of Warren
Northwilkesboro, N. C.	Bank of Northwilkesboro
Norwood, N. C.	Bank of Norwood
Old Fort, N. C.	Bank of Old Fort
Oriental, N. C.	Bank of Pamlico
Parkton, N. C.	Bank of Parkton
Parmele, N. C.	Parmele Bank & Trust Co.
Pilot Mountain, N. C.	Farmers Bank
Pinehurst, N. C.	Bank of Pinehurst
Pine Level, N. C.	Bank of Pine Level
Pittsboro, N. C.	Bank of Pittsboro
Pittsboro, N. C.	Farmers Bank
Plymouth, N. C.	Bank of Plymouth
Plymouth, N. C.	Washington County Bank
Potecasi, N. C.	Bank of Potecasi
Powellsville, N. C.	Powellsville Bank
Princeton, N. C.	Merchants & Farmers Bank
Proctorville, N. C.	Bank of Proctorville
Raeford, N. C.	Bank of Hoke
Raeford, N. C.	Bank of Raeford
Ramsuer, N. C.	Bank of Ramseur
Randleman, N. C.	Peoples Bank
Richfield, N. C.	Peoples Bank & Trust Co.
Richlands, N. C.	Citizens Bank
Rich Square, N. C.	Bank of Rich Square
Rockwell, N. C.	Bank of Rockwell
Roper, N. C.	Bank of Roper
Roseboro, N. C.	Bank of Roseboro
Roseboro, N. C.	Coharie Bank of Roseboro
Rose Hill, N. C.	Bank of Rose Hill

Place of Business	Name
Roxobel, N. C.	Bank of Roxobel
Roxobel, N. C.	Roanoke-Chowan Bank
Salemburg, N. C.	Bank of Salemburg
Saluda, N. C.	Bank of Saluda
Saluda, N. C.	Carolina State Bank
Sanford, N. C.	Banking Loan & Trust Co.
Sanford, N. C.	Bank of Sanford
Seagroves, N. C.	Bank of Seagroves
Severn, N. C.	Bank of Severn
Shallotte, N. C.	Citizens Bank
Siler City, N. C.	Siler City Loan & Trust Co.
Siler City, N. C.	Chatham Bank
Sparta, N. C.	Bank or Sparta
Spruce Pine, N. C.	Bank of Spruce Pine
Stanley, N. C.	Farmers & Merchants Bank
Stem, N. C.	Bank of Stem
Stokes, N. C.	Planters Bank
Stokesdale, N. C.	Stokesdale Commerical Bank
Stoneville, N. C.	Bank of Stoneville
Stoneville, N. C.	Farmers & Merchants Bank
Stony Point, N. C.	Bank of Stony Point
Sylva, N. C.	Tuckaseigee Bank
Sylva, N. C.	Jackson County Bank
Tabor, N. C.	Bank of Whiteville
Tabor, N. C.	Farmers & Merchants Bank
Todd (Elkland), N. C.	Bank of Todd
Trenton, N. C.	Bank of Jones
Troutman, N. C.	Troutman Banking & Trust Co.
Troy, N. C.	Bank of Montgomery
Troy, N. C.	Troy Bank & Trust Co.
Turkey, N. C.	Bank of Turkey
Vass, N. C.	Bank of Vass
Vineland, N. C.	Bank of Columbus
Waco, N. C.	Peoples Bank
Wagram, N. C.	Bank of Wagram
Wake Forest, N. C.	Bank of Wake
Walnut Cove, N. C.	Bank of Stokes County
Walnut Cove, N. C.	Farmers Union Bank & Trust Co.
Warrenton, N. C.	Bank of Warren
Warrenton, N. C.	Citizens Bank
Warsaw, N. C.	Bank of Warsaw
Waxhaw, N. C.	Waxhaw Banking & Trust Co.
Weldon, N. C.	Weldon Bank & Trust Co.
Whiteville, N. C.	Bank of Whiteville

Place of Business	Name
Whiteville, N. C.	Bank of Columbus
Wilkesboro, N. C.	Bank of Wilkes
Williamston, N. C.	Farmers & Merchants Bank
Williamston, N. C.	Martin Co. Savings & Trust Co.
Winterville, N. C.	Bank of Winterville
Winton, N. C.	Bank of Winton
Winton, N. C.	Merchants & Farmers Bank
Woodland, N. C.	Farmers Bank
Yanceyville, N. C.	Bank of Yanceyville

The following banks have not become parties to the suit, nevertheless they have signified to us their intention to take advantage of the law by refusing to remit at par in exchange, and refusing to pay in money, checks presented to them by our agents. We, therefore, cannot handle checks drawn upon these banks. Every such check would necessarily be returned by us with a notice of dishonor after presentation.

Place of Business	Name
Auburn, N. C.	Auburn Banking Co.
Bethel, N. C.	Farmers & Merchants Bank
Bethel, N. C.	Bethel Banking & Trust Co.
Pilot Mountain, N .C.	Bank of Pilot Mountain
Pinnacle, N. C.	Bank of Pinnacle
Southport, N. C.	Bank of Southport
Taylorsville, N. C.	Merchants & Farmers Bank
Valle Crucis, N. C.	Valle Crucis Bank

Checks on all banks in North Carolina both member banks and non-member banks can still be collected at par by the Federal Reserve Bank, except checks on the banks whose names occur on this list.

The defendant admits that Exhibit "F," the same being Circular No. 45, was sent out to all member banks of the Fifth Federal Reserve District. The plaintiffs introduced the fifth paragraph of Exhibit "F." The defendant thereafter introduced in evidence the residue of the Exhibit as defendants Exhibit No. 1.

PLAINTIFFS EXHIBIT F.

Circular No. 45

FEDERAL RESERVE BANK OF RICHMOND
THE COLLECTION SYSTEM

June 12th, 1916.

To Members of the Federal Reserve Bank of Richmond:

Under the authority and direction of the Federal Reserve Board, in pursuance of the provisions of law contained in Section 16 of the Federal Reserve Act, the Federal Reserve Bank of Richmond and all other Federal Reserve Banks, on July 15th, 1916, will inaugurate for the benefit of member banks and through them for the benefit of the public

A CHECK COLLECTING AND CLEARING SYSTEM

to be operated upon the terms and principles set forth in Circular No. 1 of the Federal Reserve Board, dated May 1st, 1916, on "Check Clearing and Collection," a copy of which was sent to you.

The clearing agreement now in operation will be discontinued on July 15th, and members will please bear in mind that items reaching us on that day will be handled under the new plan.

PLAN OF OPERATION

1st. CHECKS RECEIVED FROM MEMBER BANKS

This Federal Reserve Bank will receive at par from its member banks:

(a) Checks drawn on all member banks, whether in its own district or other districts.

(b) Checks drawn upon non-member banks, when such checks can be collected by Federal Reserve Banks at par.

Arrangements will be made at the beginning, wherever practicable, either through member banks or otherwise, for the collection of checks on non-member banks at par,

and a "par list" of such banks will be published from time to time for the use of member banks. This list will be extended as rapidly as possible. It is estimated that as soon as the new Clearing System is put into operation checks upon about 15,000 National Banks, State Banks, and Trust Companies can be handled by the Federal Reserve Bank at par.

The benefits to the banking business as a whole and to all patrons of banks of a direct, quick collecting system at par are plainly manifest, and the cooperation of non-member banks and the public to this end is earnestly solicited in the general interest.

WHEN PROCEEDS OF CHECKS WILL BECOME AVAILABLE AS RESERVE

Immediate credit entry upon receipt, subject to final payment, will be made for all such items on the books of the Federal Reserve Bank, at full face value, but the proceeds will not be counted as reserve, nor become available to meet checks until actually collected.

The Federal Reserve Bank in making advice of the credit of such items will state plainly the time when the proceeds of each item or class of items will become available as Reserve or subject to withdrawal.

A time schedule, within the district, and for other districts, will be furnished, so that members may know accurately in advance when their remittances will become available as reserve, or for withdrawal in excess of the required reserve.

Members will thus be placed in a position to make the fullest use of their loanable funds, since no balances in excess of legal reserve will have to be maintained as a basis of credit, or for collection or other services as under the present system.

2nd. CHECKS SENT TO MEMBER BANKS

Checks received by a Federal Reserve Bank on a member bank will be forwarded direct to such member bank, but will not be charged to its account until advice of payment has been received, or until sufficient time has elapsed within which to receive advice of payment. Such checks will then be charged against the actual reserve held for the member bank, and the failure of any bank to have with the Federal Reserve Bank sufficient collected funds above its required reserve to pay checks so charged against its account after the elapsed time, will constitute an impairment of its reserve.

Every member bank will thus have been given full opportunity to collect checks through the Federal Reserve Bank at par out of the proceeds of which to pay checks upon itself after presentation at its own counter.

WHEN MEMBERS MAY REMIT CURRENCY AT EXPENSE OF FEDERAL RESERVE BANK

In any case where a member bank is not able to provide checks for collection from the proceeds of which to offset checks upon itself; that is to say, if a member bank at any time finds that it will not have available at the time required collected funds with the Reserve Bank, over and above its required reserve, with which to pay checks upon itself after presentation at its own counter, then and in that case the member may remit from its own vaults, at the expense of the Federal Reserve Bank, either lawful money fit for circulation or Federal Reserve Notes. Should the member fail to promptly provide cash or the immediate equivalent of cash to meet such checks, it would result in an impairment of its reserve, as above stated.

The member bank will thus in effect pay checks only at its own counter, and will have been given the eminently fair opportunity of collecting checks upon other banks

free of charge, and of using them as an offset against checks upon itself.

3rd. IMPAIRMENT OF RESERVES

As stated in the circular No. 1 of the Federal Reserve Board, dated May 1st, on "Check Clearing and Collection"—

"It is manifest that items in process of collection cannot lawfully be counted as reserve, either by a member bank or by a Federal Reserve Bank."

Therefore, should a member bank draw against such items in anticipation of collection, and should the draft be presented in advance of actual collection, it could only be charged against the reserve of the member if such reserve is sufficient in amount to pay it. Should this charge result in impairment of the reserve required to be maintained by law, such impairment would subject the member bank to all the penalties provided by the Act.

The penalty for impairment of reserves, fixed by the Federal Reserve Board, to be imposed by the Federal Reserve Bank of Richmond, is an interest charge of 2 per cent above the discount rate on 90 days commerical paper, but in no case less than 6 per cent per annum. Should the rate on such commerical paper be 4 per cent as at present, the penalty would be at the rate of 6 per cent on the deficiency of reserve. The penalty is subject to change at the discretion of the Federal Reserve Board.

Member banks at all times will have it wholly within their own power to avoid impairment of reserves, and impairment can only be at their own election. Reserves can always be kept intact by rediscounting.

4th. STATEMENT OF RESERVES

Member banks have been making weekly statements of the reserves required, according to their own books. Such statements will be used in determining impairment of re-

serves, and members will be required to forward such statements promptly. Blank forms will be furnished for this purpose.

5th. FEDERAL RESERVE BANK WILL ACT AS AGENT OF MEMBER

In handling items for member banks the Federal Reserve Bank will act as agent only, and except for negligence will assume no liability.

Members in sending their items to the Federal Reserve Bank will be assumed to have expressly entered into this agreement and to have expressly authorized the Federal Reserve Bank as agent to forward items direct to the banks on which drawn, or whenever for any reason it may seem advisable, to forward them for collection to any other agent at its discretion.

6th. SERVICE CHARGE

The Federal Reserve Bank extends its collection services to its members, and through them to the public, at the cost of performing the service.

It is wholly impracticable to create any other organization, as comprehensive and effective as the Federal Reserve System for the economical performance of this service, and it is confidently anticipated that the cost to the country of the present indirect and unsound methods of collection will be greatly reduced by the operation of the new system.

The average amount of balances of National banks maintained chiefly to support the present collection system during the five years immediately preceding the inauguration of the Federal Reserve System was $858,000,000 in excess of the reserve required by law. Of this huge sum the country banks alone maintained $358,000,000.

The release of balances for loans, without considering other manifest advantages of a direct system of collection,

and the other forms of profitable business which now for the first time may be done under the Federal Reserve System, and the growth of banking under the System will with certainty, eventually, if not immediately, recompense for any loss of exchange revenue.

As stated by the Federal Reserve Board in its circular—

"The cost of collecting and clearing checks must necessarily be borne by the banks receiving the benefit and in proportion to the service rendered."

The actual cost of performing this service will be accurately kept, and will be assessed monthly against the member banks from which items are received.

The cost to this bank at the beginning is estimated to be 1½ cents for each item handled, and that charge has been fixed by the Federal Reserve Board, to be imposed "for the service of clearing or collection rendered by the Federal Reserve Bank."

It is hoped that experience may enable us to considerably reduce the charge here specified.

No service charge will be made for collecting checks on Richmond.

7th. RESTRICTION OF INDORSEMENTS

In order to remedy the evil of indirect routing of items no Federal Reserve Bank will receive from its members for collection checks on any district but its own, when such checks bear the indorsement of a bank located in another district.

By way of illustration—

Should a bank anywhere in this district send checks received by it on deposit, drawn upon any other bank within the district, to a member bank in New York, The Reserve Bank of New York would not receive such checks from its member bank.

It is admitted that Exhibit "G" is instructions to collectors who were entrusted with the collection of checks by the defendant. The plaintiffs introduced Exhibit "G."

PLAINTIFFS EXHIBIT G.

FEDERAL RESERVE BANK OF RICHMOND
INSTRUCTIONS FOR COLLECTORS

All checks received by you must be presented on the day received, or, if received after bank hours, on the next business day. All money collected must be packed and shipped according to instructions given below as soon as collected, and checks not paid on presentation must be immediately protested and returned to us. Do not hold any money or checks under any circumstances.

PRESENTATION

All checks sent to you are endorsed as follows:

"Pay to any duly authorized collector of the Federal Reserve Bank of Richmond all prior endorsements guaranteed.

FEDERAL RESERVE BANK OF RICHMOND,
By George H. Keesee, Cashier.

Received payment, all prior endorsements guaranteed.

Collector for Federal Reserve Bank of Richmond."

Take all the checks to the bank to which you are accredited during the usual banking hours—on Saturday before 12 M., and exhibit your letter of authority. Leave the letter with the bank for their files if they request it. Exhibit all checks to the teller, cashier or other officer in charge and demand payment in money. Do not accept checks, drafts or anything except cash to the full face amount of the checks. Cash means any paper currency,

gold coins, silver dollars, small silver (halves, quarters and dimes) for amounts up to $10.00 and minor coins (nickels and pennies) up to 25 cents. Each check is a separate item, so a bank may give you for a $15.00 check $10.00 in small silver, and 25 cents in minor coins, but no larger amounts of these coins. For the convenience of the bank, if they have no other money, you may accept larger amounts of small silver or minor coins, but do not accept them unless the bank has no other money. Receipt on the check for all checks paid by signing your name as collector. If payment of any check is refused, no mater for what cause, protest it and return at once—by the first mail leaving your town.

PROTEST NOTICE AND RETURN

Protest is a formal demand for payment by a notary public, and his certificate showing presentment, demand for payment and refusal. The notary must go in person to the bank at which the check is payable, during usual business hours—on Saturday before 12 M., exhibit the check to the officer in charge and demand payment. If payment is refused he must write or stamp across the face of the check following:

Protested for Non-Payment

____

Notary Public.

My Commission expires __________________, 192___

Fee $________________________________

When a note of protest has been written or stamped on the check, the notary must make out notices of dishonor for the drawer of the check, endorsers, banks and others. Forms for this notice are furnished you. The notice must be filled with a full description of the check showing, (a) its amount, (b) by whom it was drawn, (c) to whose order it was payable, (d) its date, (e) the bank on

whom it was drawn, (f) the reason given for refusal to pay thus:

To: (fill in the name of the drawer and all endorsers)

(Place)

(Date)

John Smith
William Brown
Bank of Blankville
Federal Reserve Bank of Richmond.

Please take notice that a check for $100.00 drawn by John Smith to the order of William Brown, dated February 2, 1920, on the Exchange Bank of Squeedunk, was this day duly presented by me to the above drawee, and payment was duly demanded, but refused, the reason given being_______________________________________

____

Whereupon I protested the said check for non-payment, and the holder looks to you for payment thereof, with all costs and charges thereon.

Done at the request of the Federal Reserve Bank of Richmond.

Notary Public.

My commission expires___________________, 192___

Charges $_______________________________

Make one copy of this notice for the drawer of the check and one for each endorser and attach all copies to the check and **return to the Federal Reserve Bank of Richmond at once, by the next mail leaving your town. Do not enclose returned checks with shipments of money.**

If the agent is a notary, on presenting the check, inform the bank of that fact, and that the check will be at once protested if payment is refused. If the agent is not a

notary, the notary must himself present the check and demand payment, even though the agent has already presented it. The agent should accompany the notary to receive payment in the event payment should be offered at the time the check is presented for protest.

SHIPMENT OF MONEY

As soon as money is received ship it to us. Under no circumstances delay shipment longer than is necessary to carry it to the post office or express office. Place all money in the bags sent you. Seal each package securely and mark the shipping tag plainly with the address, "Federal Reserve Bank of Richmond, Richmond, Virginia," placing your name and address also on the bag. If the money be sent by express you must also state on the tag or outside of the package the amount of money enclosed.

If possible send the money by registered mail. We carry insurance on all money so shipped, but in order to make our insurance effective, the following conditions must be strictly complied with:

(1) The package must be correctly addressed and securely sealed as above.

(2) As soon as the package containing the money is deposited in the post office, the registered mail receipt and the shipping notice (forms for which are furnished) must be placed in a properly stamped envelope, addressed to the Federal Reserve Bank of Richmond, and mailed at the time the money is shipped. Do not mail this notice and the registry receipt in the same envelope with the return checks and in all cases deposit the letter containing the notice in the post office at the same time that the money is shipped.

If for any cause money cannot be sent by registered mail, send it by express. Seal the package securely, as

in the case of shipments by registered mail, and write the amount on the shipping tag. Take it to the nearest express office, and inform the agent of the fact that the package contains money and tell him the amount. He will give you a receipt showing the shipment of a sealed package said to contain money. See that this is done and the amount correctly stated.

Shipments by registered mail cannot exceed 75 pounds; therefore, if your shipment exceeds that amount divide it into two parcels or ship by express. If there is no express office in your town, and it is necessary to ship by express, take the package at once to the nearest office by automobile or any other safe conveyance and charge us with the cost of such conveyance. In no case intrust the possession or keeping of any money to any person but yourself, and keep it in your own personal possession from the time it is received from the bank until it is shipped as above, as our insurance policies do not cover theft when the money is in the possession of any person except our duly appointed collector.

In case of any doubt as to what you should do under any circumstances that may arise, wire us fully of the circumstances and we will reply by wire and pay all charges both ways; or call us up by the long distance telephone, ask for the manager of the Transit Department, and all charges may be reversed.

FEDERAL RESERVE BANK OF RICHMOND.

REGULATION J, Series of 1920. (Superseding Regulation J, of 1917.

It is admitted that Exhibit "H" is a correct copy of regulation "J" of the Federal Reserve Board, issued to all Federal Reserve Banks. The plaintiffs introduced in evidence Exhibit "H."

PLAINTIFFS EXHIBIT H.

CHECK CLEARING AND COLLECTION.

Section 16 of the Federal Reserve Act authorizes the Federal Reserve Board to require each Federal Reserve Bank to exercise the function of a clearing house for its member banks, and section 13 of the Federal Reserve Act, as amended by the act approved June 21, 1917, authorizes each Federal Reserve Bank to receive from any nonmember bank or trust company, solely for the purposes of exchange or collection, deposits of current funds in lawful money, national-bank notes, Federal Reserve notes, checks, and drafts payable upon presentation, or maturing notes and bills, provided such nonmember bank or trust company maintains with its Federal Reserve Bank a balance sufficient to offset the items in transit held for its account by the Federal Reserve Bank.

In pursuance of the authority vested in it under these provisions of law, the Federal Reserve Board, desiring to afford both to the public and to the various banks of the country a direct expeditious, and economical system of check collection and settlement of balances, has arranged to have each Federal Reserve Bank exercise the functions of a clearing house for such of its member banks as desire to avail themselves of its privileges and for such non-member State banks and trust companies as may maintain with the Federal Reserve Bank balances sufficient to qualify them under the provisions of section 13 to send items to Federal Reserve Banks for purposes of exchange or of collection. Such non-member State banks and trust companies will hereinafter be referred to in this regulation as non-member clearing banks.

Each Federal Reserve Bank shall exercise the functions of a clearing house under the following general terms and conditions:

(1) Each Federal Reserve Bank will receive at par from its member banks and from nonmember clearing banks in its district, checks[1] drawn on all member and nonmember clearing banks and other nonmember banks which agree to remit at par through the Federal Reserve Bank of their district.

(2) Each Federal Reserve Bank will receive at par from other Federal Reserve Banks, and from all member and nonmember clearing banks, regardless of their location, for the credit of their accounts with their respective Federal Reserve Banks, checks drawn upon all member and nonmember clearing banks of its district and upon all other nonmember banks of its district whose checks are collected at par by the Federal Reserve Bank.

(3) Immediate credit entry upon receipt subject to final payment will be made for all such items upon the books of the Federal Reserve Bank at full face value, but the proceeds will not be counted as part of the minimum reserve nor become available to meet checks drawn until such time as may be specified in the appropriate time schedule referred to in subdivision 7.

(4) Checks received by a Federal Reserve Bank on its member or nonmember clearing banks will be forwarded direct to such banks and will not be charged to their accounts until sufficient time has elapsed within which to receive advice of payment, as shown by the appropriate time schedule referred to in subdivision 7.

(5) Under this plan each Federal Reserve Bank will receive at par from its member and nonmember clearing banks checks on all member and nonmember clearing

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[1] A check is generally defined as a draft or order upon a bank or banking house, purporting to be drawn upon a deposit of funds, for the payment at all events of a certain sum of money to a certain person therein named, or to him or his order, or to bearer, and payable instantly on demand.

banks and on all other nonmember banks whose checks can be collected at par by any Federal Reserve Bank. Member and non-member clearing banks will be required by the Federal Reserve Board to provide funds to cover at par all checks received from or for the account of their Federal Reserve Banks: Provided, however, That a member or nonmember clearing bank may ship currency or specie from its own vaults at the expense of its Federal Reserve Bank to cover any deficiency which may arise because of and only in the case of inability to provide items to offset checks received from on for the account of its Federal Reserve Bank.[2]

(6) Section 19 of the Federal Reserve Act provides that—

The required balance carried by a member bank with a Federal Reserve Bank may, under the regulations and subject to such penalties as may be prescribed by the Federal Reserve Board, be checked against and withdrawn by such member bank for the purpose of meeting existing liabilities: Provided, however, That no bank shall at any time make new loans or shall pay any dividends unless and until the total balance required by law is fully restored.

Items can not be counted as part of the minimum reserve balance to be carried by a member bank with its Federal Reserve Bank until such time as may be specified in the appropriate time schedule referred to in subdivision 7. Therefore, should a member bank draw against items before such time, the draft would be charged against its reserve balance if such balance were sufficient in amount to pay it; but any resulting impairment of re-

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[2] In accordance with instructions issued by the Federal Reserve Board on April 24, 1917, the various Federal Reserve Banks have issued circulars setting forth the conditions under which their respective member banks may draw drafts on their Reserve Banks accounts payable with or through any other Federal Reserve Bank.

serve balances would be subject to all the penalties provided by the Act.

Inasmuch as it is essential that the law in respect to the maintenance by member banks of the required minimum reserve balance shall be strictly complied with, the Federal Reserve Board, under authority vested in it by section 19 of the Act, has prescribed as the basic penalty for any deficiency in reserves a sum equivalent to an interest charge on the amount of the deficiency of 2 per cent per annum above the ninety day discount rate of the Federal Reserve Bank of the district in which the member bank is located, and has announced that it will prescribe for any Federal Reserve district, upon the application of the Federal Reserve Bank of that district, as an additional progressive penalty for any subsequent deficiency by the same member bank during the same calendar year a sum equivalent to an interest charge on the amount of the subsequent deficiency at a rate increasing one-half of 1 per cent for each such subsequent deficiency.

(7) Each Federal Reserve Bank will determine by analysis the amounts of uncollected funds appearing on its books to the credit of each member bank. Such analysis will show the true status of the reserve held by the Federal Reserve Bank for each member bank and will enable it to apply the penalty for impairment of reserve.

Each Federal Reserve Bank will publish time schedules showing the time at which any item sent to it will be counted as reserve and become available to meet any checks drawn.

(8) In handling items for member and nonmember clearing banks, a Federal Reserve Bank will act as agent only. The Board will require that each member and nonmember clearing bank authorize its Federal Reserve Bank to send checks for collection to banks on which checks are drawn, and, except for negligence, such Federal Reserve Bank will assume no liability. Any further re-

quirements that the Board may deem necessary will be set forth by the Federal Reserve Bank will be set forth by the Federal Reserve Banks in their letters of instruction to their member and non-member clearing banks. Each Federal Reserve Bank will also promulgate rules and regulations governing the details of its operations as a clearing house, such rules and regulations to be binding upon all member and nonmember banks which are clearing through the Federal Reserve Bank.

DIRECT EXAMINATION.

H. A. PAGE, JR., a witness, testifies as follows:

"My name is H. A. Page, Jr. I am 34 years old and I have been engaged in the banking business for eight or ten years. I am Treasurer of the Page Trust Company, which operates seven branches of banking houses at the following places: Sanford, Campbell, Southern Pines, Carthage, Aberdeen, Raeford and Hamlet, all in the State of North Carolina. I know Mr. Wheelwright but I do not know what position he holds with the Federal Reserve Bank of Richmond. The first time I saw him, he came on the par collection matter and I know he is employed by the Federal Reserve Bank of Richmond. I had an experience with him on the 6th or 7th day of February, 1921, at Aberdeen, North Carolina. Mr. Wheelwright came in the bank with about fifteen thousand dollars worth of checks drawn on our bank and demanded cash. We refused to give him cash, and under the provisions of the State law that had just passed, offered him exchange on the National Park Bank of New York at one hundred cents on the dollar. He refused it. At the time, we had on deposit with the National Park Bank of New York a sufficient balance to take care of the exchange draft. New York exchange is accepted at par in Richmond. I think the National Park Bank of New York has a capital of one million dollars and surplus of that much more and deposits from one

hundred and fifty to two hundred million. It is one of
strongest banks in the United States.

Mr. Wheelwright refused the exchange and demanded
rency. He said he would take New York exchange at
provided we would agree to remit at par thereafter by
I told him I did not think the Federal Reserve Bank had
jurisdiction over the State banks and we were complying
the State law and acting under the authority of the State
and we were not going to pay him anything except exchang
par. He said he could not take it and later told me he
going to Hamlet, where we have another banking house.

Before he left for Hamlet he took these checks to the hotel
put a stamp on the back of each one. (The stamp used is the
which hereafter appears on the evidence.) I do not remen
the exact words but it was in substance that the checks had
presented and payment in money demanded, and, this being
fused, notice of dishonor was thereby given. He placed
stamp on the checks and mailed them in the Post Offic
Aberdeen. Mr. Wheelwright and I then went to Hamlet on
same train and the injunction order which had been issue
Charlotte that morning was served on him by the Sheri
Richmond County at the Seaboard Hotel near Hamlet as
as I reached that place, and, I think, before he had prese
any checks in Hamlet. I do not know whether Mr. W
wright told me in so many words why he was presenting ch
for the Federal Reserve Bank and demanding currency, I
think he said it was to establish par clearance in North C
lina.

It has always been the custom of our banks to charge
for remitting for checks, prior to the institution of the
clearance system. Our banks realized, I should say, from t
twelve thousand dollars a year from this source. This wa
all profit because there was some expense for postage and
tionery, but I should say seventy-five per cent of it was p

I should say that the average non-member State ban
North Carolina realizes about eighteen hundred to two thou

dollars from exchange charges. There are as many as five hundred State banks in North Carolina which realize from twelve hundred to fifteen hundred annually from exchange. I do not see how the smaller banks could do business without this profit. A good many are just making buckle and tongue meet and the only way they can get on is with exchange. Some have total deposits of less than ten thousand dollars, one-half of which is on savings account, and if this was not supplimented by exchange I do not see how they could stay in business.

In the final analysis, a customer of a bank himself pays exchange, but where he does other business it can be taken out by Wholesale merchants and their banks, and so comes out of the depositor secondarily. It may be added to the cost of the goods. It is paid by the payee of the check.

I know of one particular instance in which the payee of a check has been required to pay exchange. I gave a check to a party in Boston for $800.00 between November 15th and February 5th when my bank was remitting at par to the Federal Reserve Bank of Richmond and when all North Carolina was on the par list. At the end of the month the payee of this check came in and wanted to know why our bank charged him $2.00. We got that check from the Federal Reserve Bank of Richmond and remitted them at 100 cents on the dollar. The Boston bank or somebody outside of this State charged them $2.00. Prior to the par clearance collection system I would have gotten 1/8 of 1% of the amount of this check, or $1.00 out of the $2.00 charged by the Boston bank. After par clearance, the Boston bank got the $2.00. The New York banks still charge for collecting checks outside of New York, but they call it interest on the money, while it is standing out, but I would call it exchange. There are two elements in exchange—one is time and the other is distance. The charge that is made to the payee of a check amounts to the same thing whether it is called interest or exchange.

I went on the par list shortly after November 15th, but under protest. We could not help ourselves. The Federal Re-

serve Bank said that all but twenty-four of the State banks o North Carolina were going to remit at par. I have not seen an non-member bank in North Carolina that went on the par lis of its own accord. Before we went on the par list about tw per cent of the total of the checks drawn on our bank cam through the Federal Reserve Bank. These were mostly check payable to the Government. After the publication of the pa list, about ninety-five per cent of checks on our bank wer handled by the Federal Reserve Bank. The effect of the publi cation of the par list was to assemble in the hands of th Federal Reserve Bank nearly every check on every bank i North Carolina, so that practically every check from Nort Carolina banks went through the Federal Reserve Bank. I a State bank carried a good account with some clearing ban in the city, that bank might have sent direct to the State ban checks which it received on it.

The putting of North Carolina on the par list had this effe —to withdraw balances from clearing centers, like Charlott Asheville, Raleigh, Wilmington and Winston, and carried the to Richmond, as the bank had to keep a balance in Richmon to check upon. In our own particular case, our balance in Ric mond rose from fifty to one hundred thousand dollars. In m opinion, from five to ten million dollars left North Caroli in a few days and went to Richmond, because the North Car lina banks could not carry balances in two places. This ha pened on November 15, 1920, right at the darkest hour of th panic.

After the injunction in this suit, the Federal Reserve Ban refused to handle checks upon us and they began to com through the old regular channels through which they are no being collected, and we are charging ⅛ of one per cent exchan upon such checks.

The law of North Carolina requires a State bank to carry per cent of its deposits in cash in its vault. Nothing like th much is usually kept there. In some places it takes practical no money. In other places, like cotton mill towns, where th

payrolls are larger, it takes more. The remainder of the reserves in the North Carolina State banks are kept in clearing centers, like New York, or in the banks in the State. None of our reserves aré now kept in Richmond. A very large number of North Carolina State banks carry their reserves with other banks in this State, like the Murchison National Bank of Wilmington. The reserves which we carry with such banks are a basis for credit which we may receive from that bank. If a non-member bank had to pay ninety-five per cent of its checks over its counter it would, in the first place, have to increase its usual cash reserve and decrease its loans, because if all the checks came over the counter it would be necessary to carry thirty to thirty-five per cent cash on hand to take care of it, and that would necessarily mean the curtailment of the loans and of the service you could render your community. Cash in the safe does not bring in any profit and no country bank could stand this practice long. The balances that we carry in banks draw interest, as a rule; ordinarily, three per cent. We could not do business over the counter very long. You could estimate the damage to you but it would depend upon how much cash you would have to carry, and you could tell about how much you lost that way. A bank would have to get the cash to pay over its counter by express from some reserve center. This would be expensive and hazardous and would necessitate the carrying of heavy insurance. If I had to make a choice between remitting at par and paying in cash over the counter, I would remit at par. I couldn't pay in cash. If the Federal Reserve Bank of Richmond is allowed to make demand for payment in cash over the counter, the bank is obliged to submit to the par clearance scheme; that is the reason I went in in November. The continual presentation of checks over the counter and the demand for cash day after day and carrying off that cash would hurt the business of the bank and its credit standing very much. If the depositors saw a strange man coming in with checks and taking out cash day by day, they would want to know why, it would shake their confidence in the bank, and it would be mighty hard to

convince them that that was regular business. If the Federal Reserve Bank were allowed to present checks over the counter and take the money out of the State, we would soon have to send out of the State for cash. This would reduce the money in the various communities available for lending, as you would have to keep so much more cash than under the present plan.

If the Federal Reserve Bank had been allowed on the 7th day of February, when this injunction was obtained, to go into the State and collect all checks drawn on the banks in cash, in my opinion the State banks could not have held out against the Federal Reserve Bank for a week. It is hard to say what the effect would have been on the moneytary conditions within the State, whether it would have precipitated a panic or not; but the few checks they sent back created a furor. If the Federal Reserve Bank had sent back to our customers the checks which they had drawn on our banks with the notation that they were dishonored because we would not pay in cash, the effect on the bank would have been practically the same as a protest. That would injure our bank because if our customers could not get their checks paid, they would immediately withdraw all the money they had in the bank. A customer does not know the difference between a dishonored check and a protested one. There is no way by which you can calculate the extent to which a bank would be injured by that sort of thing. A customer might take his money away and say nothing about it and you could not explain it to him. You would not know anything about it because he would not say anything to you.

On cross-examination, the witness testified as follows:

CROSS-EXAMINATION.

"The checks were presented by Mr. Wheelwright. The fact that demand was made for money did not annoy me. We had the money The fact that these checks went back with that notice of dishonor on them was what annoyed us. There was absolutely nothing in Mr. Wheelwright's personal conduct and behavior which annoyed me."

The witness is handed the paper. He read it and said that this was a stamp put on the checks by Mr. Wheelwright. The stamp was as follows:

> This check was on the above date presented to the drawee bank at its office by a duly authorized agent of the Federal Reserve Bank of Richmond, and payment in money demanded, which was refused, the drawee claiming the right to discharge its obligation by its own draft. Notify all prior parties of the dishonor of this check.
>
> FEDERAL RESERVE BANK OF RICHMOND

This was the notice that was put on the check. The notice is a substantially true statement of what took place, except that exchange was offered at par. We claimed the right to pay by exchange draft. There is nothing in the notice which states that we wished to make any reduction. I presume that we had money in the vault to pay Mr. Wheelwright. I do not know that to be a fact. We do not carry more than $15,000.00. We do not need to carry more than that. I was willing to give him a check on the National Park Bank of New York. Had he accepted that check and returned day after day, we would have given him our check on the National Park Bank or some other equally good correspondent. I was not willing to place the same check in an envelope, furnished by the Federal Reserve Bank, and transmit it through the mail, because I thought that the Federal Reserve Bank had nothing to do with the Page Trust Company. We are chartered under the laws of North Carolina, and as such we do business under the laws of North Carolina, and the coming here of the Federal Reserve Bank was an interference. I thought that I had a legal right to discharge my obligation by tendering a draft for the face amount of the check and that neither the Federal Reserve Bank nor anyone else had any right to criticize or object to my standing upon my legal rights. I did not fear the criticism of the Federal Reserve Bank but I did fear the criticism of others when a check was sent back by the Federal Reserve Bank with that

notice on it. I was willing to give the draft in Hamlet but was not willing to mail it to Richmond, because I felt that the law gave me the right to pay that way and the Federal Reserve Bank of Richmond had no right to say anything as to whether or not I should pay or whether or not I refused to mail the draft. We stood upon our legal rights even though we knew it was more inconvenient to the Federal Reserve Bank to send a man day after day to present checks and to receive draft in payment, because we were after the exchange. I felt that the Federal Reserve Bank had nothing in the world to do with the Page Trust Company and its checks, had no right to come in and say that the Page Trust Company must do thus and so. We had nothing to do with the Federal Reserve Bank and I figured the Federal Reserve Bank had nothing to do with us. We were complying with the laws of the State of North Carolina in refusing to give cash and offering it in exchange at par. We had just as soon collect exchange from the Federal Reserve Bank of Richmond as anyone else if they want to pay it. My interpretation of the Federal Reserve Act was that the Federal Reserve Bank did not have to handle checks on State banks. They had forced the par list on us. I would not say that our course was dictated by a desire to force the Federal Reserve Bank to cease collecting checks upon us or pay exchange. It was our desire to enjoy the same exchange that we had enjoyed ever since we were in business. If the Federal Reserve Bank either could not or would not pay exchange, we desired that the Federal Reserve Bank cease handling our checks.

The National Park Bank of New York is our chief northern correspondent. We have other reserve correspondents for the most part they are members of the Federal Reserve System. When we receive a check drawn on a bank in another city, we usually send it to one of our reserve correspondents for collection and credit, and if that check is drawn upon a bank on the par list or upon a member bank of the Federal Reserve System our correspondent can collect that check at par. In collecting that

check at par, our correspondent is acting as our agent. It may be true that through the means of our correspondents we are collecting at par checks upon all member banks of the Federal Reserve System and all banks upon its par list, without the payment of exchange, and we do not wish to reciprocate by paying to them all checks at par.

I do not know of any check other than the one sent to Boston that I spoke of, upon which such a fee was charged. In the natural course of business, if the Boston bank gave cash or immediate credit for the $800.00, it would be three or four days before that bank got the money back. The fee charged by the Boston bank was 6 per cent for fifteen days. It was either an exchange charge or an exorbitant rate of interest. Making a deduction from the face of a check is exactly like paying freight on shoes from St. Louis. It is the distance. A check drawn on our bank is payable there and if the holder asks for cash at the window there is no distance to be overcome. If, on the other hand, the shoe merchant in St. Louis takes that check and has to pay the exchange, and my customer has to pay at the last analysis, which I admit, why should my customer pay it and then not get it? My customer should get it, but as a matter of fact he cannot.

I have not received a copy of the schedule of charges for collections made by New York banks lately.

I calculated the movement of the money out of North Carolina on or about November 15th by taking our account and multiplying it by the number of banks. I have knowledge of such movement of funds by heresay from other banks. I cannot remember the names of the banks or the amounts moved. The other banks did not give me conjectures as to the amount moved. They said they had to transfer all their accounts to Richmond, and I figured they were in about the same fix we were. I know that our deposits in Richmond rose when we were put on the par list. I have no positive knowledge as to the amount of money transferred to Richmond by any other bank, but I do have knowledge that money went there.

A bank does not ordinarily carry in its vaults sufficient money to meet all checks that are presented in a single day, including those presented from out-of-town sources and those presented locally. It must have within its vaults or with the reserve correspondents sufficient money to meet these demands. If a large number of our checks come from reserve correspondents and a small number are presented locally, we keep a large available reserve with our correspondents and a small reserve in the vault. If a large number of checks were presented for payment in cash and a small number came from your reserve correspondents, you would have to carry a large vault reserve and a small balance reserve, but this would be a burden. The burden would be the loss of interest on the large reserve balances and the loss of other advantages. One would be that we would lose our line of credit on our balances. The combined size of the two reserves would eventually be affected because if we did not have the credit line built up by deposits with the reserve banks we could not take care of a large number of customers. The collection system of the Federal Reserve Bank would not affect the amount of reserves one has to carry. We now keep our reserves in North Carolina banks. Reserve balances are a source of benefit by way of interest and increased credit lines. It is up to a bank to take care of its customers, and if it does not have a credit line and has to depend upon deposits, then when the deposits are small it cuts that much credit out. It is necessary, too, but does not cost anything to maintain a balance reserve in a financial center. This reserve is built up by sending to that center checks for collection and very seldom is it built up by the shipment of currency, except in seasons when currency is moving to the centers. There is very little cost of transmitting currency in building up a balance reserve. I know that the State of Virginia is on the par list. If the par clearance system had gone on when it was inaugurated November 15th, all the State banks would have not paid their exchange. The loss to the State would have been the loss of exchange to the banks, but if the Federal Reserve Bank had per-

sisted in asking for cash over the counter every day it would have disorganized and disrupted the banking business in North Carolina. Remitting at par would probably not produce a panic.

RE-DIRECT EXAMINATION.

If one actually sent the money to St. Louis on a purchase, an expense would be incurred. The building up of a reserve without the transfer of money entails an expense. I think it is true that a majority of the accounts carried by the country banks in North Carolina would be carried at a loss if the bank was not allowed to charge exchange. When we were on the par list from November 15th to February 5th, we remitted to the Federal Reserve Bank of New York, Boston and Richmond, and paid them exchange every time. They never declined to accept our exchange every time. They never de- the same sort of exchange that we tendered after the 5th of February. With regard to having checks collected by correspondents at par, we pay them for collecting these checks for us. In some instances, we pay our correspondents for handling checks by maintaining a balance and sometimes by an exchange charge. That is our practice now and was the practice prior to the organization of the Federal Reserve System. It had never been the custom in North Carolina banking circles to collect checks by presenting them over the counter and demanding payment in cash. It was never heard of before the Federal Reserve Bank inaugurated what has been referred to as warfare on State banks.

When Mr. Wheelwright tendered the $15,000.00 worth of checks, we did not have more than that much cash in the vaults. If we had paid him cash, it would have cleaned out the vault and we would have had to ship in cash to meet next day's checks. If a customer had come in to cash a certificate of deposit, he would have had to wait.

DIRECT EXAMINATION.

LEAKE S. COVINGTON, witness for the plaintiff, testified as follows:

"I am President of the Bank of Polkton and Cashier of the Farmers Bank of Rockingham. The Bank of Polkton is not on the par list, has never been on, and is not a party to this suit.

The Bank of Polkton withdrew fellowship from the Federal Reserve Bank on account of the visitation of a very aggressive "par-pointer." He came down three days in succession and got all the cash we had and we did not have any cash for him the fourth day and the Cashier called me up and wanted to know what to do and I told him to ask for his authority, and he said if we objected he would not insist, and we objected strenuously and he returned the checks, and we had no more visits. The Bank of Polkton was on the par list from November 15, 1920 to August, 1921. During that time it lost in exchange by remitting at par $1200.00 or $1300.00. They lost enough to keep from paying any income tax. The Federal Reserve Bank got it all.

My other bank at Rockingham has always remitted at par. We went on the par list at the time it was instituted, under the steam-roller. Our Bank at Rockingham has lost $3,000.00 per year by agreeing to remit at par. Our customers have not been benefitted in any way by our remitting at par, that I have heard of. The only ones that have been benefitted are the members of the Federal Reserve Bank. Remitting for checks is a service which costs the bank money and is of value to the one for whom the service is performed. Every analysis shows that it costs so much per thousand to handle depositors' money, it costs every bank a certain amount to handle accounts. When a bank accepts a depositor's account, it agrees to pay his orders on that account. They are all payable at the bank on which they are drawn. The State law requires a reserve of 15 per cent, three-fifths in reserve, two-fifths in the vault. Good banking would not

sanction a bank keeping in its vaults sufficient funds to pay all its checks over the counter. It would not be safe and would be more expensive. If all checks drawn on a bank were presented at the counter for payment day after day and cash demanded, it would be expensive and would require money to take care of all these items. The deposits received in country institutions would not near bring up the money to payment of the checks if all clearings came across the counter. When checks come through regular channels it does not require so much deposit in your vault. The incoming cash will take care of the withdrawals under ordinary conditions. To pay all checks in cash across the counter would impair the lending power of the bank. Banks build up a line of credit by carrying good balances with their correspondents and if you do not have the money on deposit that would give you a lower borrowing capacity. Every bank's borrowing capacity is governed by its deposits with its reserve bank. None of these non-member banks could stand out against the system by which checks are presented every day over the counter. They could not continue in business very long. If such a course were persisted in, it would put them out of business. Very few checks came on my bank through the Federal Reserve Bank prior to the time we were placed on the par list. We were placed on the list under our protest. Since that time, practically all checks drawn on our banks have come through the Federal Reserve Bank.

We are now remitting to the Federal Reserve Bank at par, sending New York or Richmond exchange. The Federal Reserve people are very nice about it. Our New York correspondent is the Hanover National Bank. It is necessary for us to keep a reserve in Richmond which we would not do except for the location of the Federal Reserve Bank. I should say that we keep twice the amount that we would otherwise. The placing of North Carolina upon the par list, in my opinion, has caused the smaller banks in North Carolina to withdraw their money from the larger ones and deposit it in Richmond and

New York and less in North Carolina. I cannot give you any estimate as to the amount.

If checks drawn on a bank were returned to the drawee dishonored for failure to pay in cash, it would be very annoying, you could not explain satisfactorily to some of your depositors the reason. It would hurt the business of any bank. If I had to make a choice of remitting at par or paying checks over the counter in money, I would remit at par. This was the reason that I elected to remit at par.

CROSS-EXAMINATION.

"I am an officer of the Farmers Bank of Rockingham; I am Cashier and Vice-President. That bank was erroneously included as one of the plaintiffs in the suit when its was instituted. I wrote the Federal Reserve Bank and told them that we were listed as a plaintiff in error. They had returned our checks as dishonored, to various customers, and the first thing I knew it was getting a great batch of checks back with a lot of literature attached, to the effect that the Federal Reserve Bank was enjoined from collecting over the counter and that it could not do anything and would not be responsible for any damages that might occur. The statement was true but I can say that I was not a party to the suit. The banks in this immediate section had a meeting in Hamlet and we decided we would make some effort to replace the loss of our exchange. We perfected an organization, I was the Chairman, and provided for a subsequent meeting at Greensboro. I found it not convenient to be there, being out of the State, and resigned as chairman. Mr. Page was Secretary and knew that I was in sympathy with this proposition, and in getting up the suit and the enjoiners he included my name, and I knew nothing of it until I returned, or I learned it first when I was in Tennessee on Saturday night, and on Sunday morning when I returned I had an unusually large number of letters. When I began to look into them, I found that I had enjoined the Federal Reserve

Bank from collecting checks on us, and I wired them immediately to know when I had gotten on as an enjoiner, that I had not known anything of it when I went West. Mr. Page thought it was agreeable to us when he included our name and when we came down to the proposition we decided in Rockingham that the four banks would join the injunction suit and all stand pat, and one bank decided that it would have a meeting of its Board of Directors, and the Board decided to leave it to the Cashier, and he said he did not believe he would join, that he would remit at par, and said he thought he ought to; and for that reason, of course, my customers have got to have the same service, and I have been remitting at par ever since, under protest. I mean that I wish all the banks of Rockingham had stood pat. The Federal Reserve Bank of Richmond did not have to coerce me. They scared me to death at the start. I wanted to explain how I got on as plaintiff. I have not had any change of heart. I think every bank in this State feels that it is entitled to exchange. The National Banks feel that they would like to have the exchange but they cannot get it. I think they are still hankering for the exchange.

J. Q. SEAWELL, witness for the plaintiff, testified as follows:

"I am Cashier of the Siler City Loan & Trust Company in Chatham County and was in November, 1920. Mr. Wheelwright, of the Federal Reserve Bank, came to see me, and after talking a bit told me that he was with the Federal Reserve Bank of Richmond and that he had come to see me with regard to par clearance in North Carolina. I said, "If you will answer one question I will go to clearing checks at par tomorrow." "If you will tell me how I can make this exchange back without heaping a service charge on my customers." And he said, to be frank, it could not be done. I then said, "Another thing; when you pursue a method that is going to be detrimental to the country banks it is not right." And he wanted to know why not And

I said, 'If it is going to force the small banks to stop charging exchange it will heap a service charge on the customers and our customers are farmers that we have educated to bring their money to the bank, and if they get a check for a service charge —they will draw all their money out of the bank and put it back in their pocket.' And he said, 'Well,' and we talked it over and he said, "Well, you are going to have to take your choice of one of two things—we are going to have to pursue a method and you have got your choice to come in now or be forced,' 'If you don't come in we are going to put a man here to bring your items and hand them to you over the counter and you won't have the privilege of giving exchange,' and when he told me he was going to force me to do a thing I told him I would take my orders from somebody higher than he was and he says 'I have got to report something and I want you to sign your name to this paper,' and says 'What do you want me to tell them?' I says 'You can tell them to 'tend to their own business and we will do the same thing.' This was in November, 1920.

Afterwards, a couple of gentlemen from the Federal Reserve came back. They did not do anything but hand me their items and wanted to collect. This was on three different occasions and I would say the checks they had amounted to about eight or nine thousand dollars. I am quite sure that was before the Act was passed. None were presented after the Act was passed. At the time they presented checks amounting to eight or nine thousand dollars, I did not have that much money. I offered to pay in exchange and they said they would not take it. I never agreed to remit at par.

J. J. JENKINS, witness for the plaintiff, testified.

DIRECT EXAMINATION.

"I am Cashier of the Chatham Bank in Siler City. Two agents of the Federal Reserve Bank came to see me in regard to collections. This was before the passage of the Act. I did

not agree to remit at par. The first one presented checks and I refused to remit at par and told him I could not do it. He wanted me to remit at par. I don't remember the conversation, but the conclusion was that we would be forced to remit at par. Checks were presented after the injunction was gotten, by a Mr. Tucker. He had two or three thousand dollars worth. He came in, introduced himself, and told me his business—to collect for the Federal Reserve Bank—and asked me to take the checks at par. I told him I could not do it and asked him if he was not afraid of being arrested. He asked why and then asked me if I was a party to the suit in Monroe. He took up the checks, put them in his wallet and asked me to come to the drug store and have a drink. I accepted and had a drink and he asked me to have a cigar, and then he said 'Have two cigars' and I said 'all right,' and we jollied each other and I went with him to the train and we had no more trouble. He didn't try to present the checks after he found that we were a party to the suit.

We have about a quarter of a million resources and carry about five to ten thousand dollars in the vault. This is not anything like sufficient to take care of all checks drawn on us if payment in cash was demanded. It is not practical to carry a sufficient amount of cash to take care of all checks if cash is demanded, and it would be very expensive. I do not think any bank could stand the practice very long. I would prefer to remit at par rather than pay cash across the counter each day. If a check was presented and cash demanded and refused, and the check sent back dishonored, it would have a very bad effect on the bank and on the customers. It would hurt the bank's business.

I have in mind two gentlemen who wrote me for failing to pay their checks, they ripped me up the back. Mr. Tucker had these checks at the time he came. I wrote the customers giving them an outline of what the trouble was and told them that when I saw them I would explain more in detail. When I explained it, it was satisfactory, but I know that the bank

has a great many customers that they could never make any explanation to.

The majority of the non-member banks in North Carolina could not do business on a paying basis without the right to charge exchange. If exchange were taken away from us we could not pay any dividend. Our exchange amounts to something like $1500.00 to $2000.00 a year. I think a fair average earning for the non-member banks in North Carolina under the present law, for exchange, would be from $1500.00 to $2000.00 a year.

CROSS-EXAMINATION.

The capital stock in my bank is $34,200. Six per cent of that is a little over $1800.00. We have a quarter of a million assets. Our loans and investments amount to something like $200,000. I can't tell you in detail the expense of our bank. I know that this last year it was absolutely necessary that we charge exchange in order to pay a dividend. We have to pay interest on our time deposits. We pay 4 per cent on time deposits. We pay on an average of more than 2 per cent on all deposits. We average 3 per cent. Our deposits are around $150,000. We do not make an average of 3 per cent on these deposits.

We keep our reserve in Greensboro and New York. I don't know that it would cost us more to keep it in Richmond than in Greensboro. I do not know that we would have to keep any more in Richmond than we now keep in Greensboro if we had to remit to Richmond. I mail for collection to Greensboro and New York. I remit to New York every time. The balance in Greensboro is kept for local purposes. Greensboro is closer to us and gives us New York exchange. I don't know that par clearance in Richmond would effect that arrangement. I remit all collections to New York. If I remitted through the Federal Reserve Bank, I don't know whether I would have to increase my New York account or not. I would not have to transfer my

Greensboro account to Richmond. It would effect my business otherwise than a loss of exchange.

RE-DIRECT EXAMINATION.

I do not know what effect the par clearance order has had on bank balances in North Carolina and on the transference of bank balances to Richmond, except what I have heard bankers say. We don't keep anything in Richmond. It took us twenty years to increase our capital stock from $15,000 to $34,000. Some of the Federal Reserve Banks made a profit of about 200 per cent in one year.

JOHN S. WESKETT, witness for the defendant, testified as follows:

I live at Bayboro, Pamlico County, and am Cashier of the Bank at Pamlico, which institution has two branches. I had the following experience with the Federal Reserve Agent:

Two gentlemen, in a Ford automobile, came down there and I got uneasy, and I thought we were held up. I told the boys to look out—that I didn't like those strangers' looks but they were very nice gentlemen and they came in and said they were representing the Federal Reserve Bank of Richmond and wanted to talk to me, and I told them all right and invited them in the office and gave them chairs, and they told me the Federal Reserve Bank of Richmond was going to put North Carolina on the par list on a certain date and they came to talk it over with me. I said 'If you are going to put North Carolina on the par list what are you talking to me for?' And they said they wanted to handle this thing in a nice, easy, smooth way, and thought it could be done better by personal interview than by letter, and I told them how I felt about exchange. That it was a very important part of our income—we were making two hundred dollars or better a month—and personally I was opposed to clearing at par and always would be, but if I had to clear at par I was the boy that could do it, and they wanted

me to sign one of those agreements to remit or not remit at par. I explained to them that we had a very active Board of Directors for a country bank, had thirty directors, and we always consulted our Board on matters of importance and that was a matter that was very important, and if he didn't mind I would like to have a little time until our Directors could take it up, and when our Directors met the matter was presented and, of course, every Director was opposed to remitting at par, and in the meantime I asked this gentleman, there was a young boy with him, and I asked him 'Suppose we don't remit at par —what will be done then.' And he said 'we will collect through the express office or the postoffice or put a man here to present your checks.' I told him he might call on the post office or the express office but I felt safe in saying he couldn't get a man in Pamlico County to do the job, present them at the window for cash, and I told him about taking it up with the directors and just what was done, and they told me if it became necessary, if I saw that there was nothing to do but remit at par, to do it, and Mr. Fry wrote me one or two letters to find out our decision in the matter. I wrote him, as I remember, that we would remit at par under protest.

Prior to November 15, 1920, the only checks that came to me from the Federal Reserve Bank were checks sent to the Government. After the par list, all checks drawn on us, except those received from correspondents, where we maintained balances, came through the Federal Reserve Bank. About ten or fifteen per cent did not. I was in Raleigh, about the time the Act was passed and when I came home I had the following experience:

I was up at Raleigh attending a meeting of these banks in this injunction, and if I remember correctly it was on Friday, and I left Raleigh at four o'clock on Saturday morning and got to Newbern in time to get on the 9:50 train and coming down there was a mighty nice gentleman on the train and I looked at him, and he was a Shriner and so was I, but I never said anything to him. I was engaged in talking to farmers on the train that were our customers, and when we got up to the

station my wife was there to me in a Henry Ford, and he says 'I think you are the man I am going to see,' and he said 'Aren't you the Cashier of the Bank?' And I said I was and he said 'I am the Federal Reserve man and I am going to your place to see you.' I said 'Get in, you can ride down town with me,' and he got in and we got to the bank and it was noon time, but I knew he would like to leave on the next train and I told my wife to go on home and I would have lunch later. We thought we would have our conversation on the q. t. and we went back in the Director's room. I can't remember his name. Finally he says 'You know what I have come for, I have got some checks on your bank, and I was sent down here to get the money and I want to know what you will do if I hand them over to you for payment—how are you going to pay me?' I said, 'Lawful payment,' and he said, 'What is lawful payment?' and I told him that the law was created to help me out and I was doing business under it.' He said, 'Well you mean exchange,' and I said 'Yes, maybe.' He said, 'But if I hand you these checks and you tender me exchange and I can't take exchange, will you give me those checks back?' And I said 'Positively not; if you ever put those checks in my hand, I will look them over and pay such as are good.' He said 'You say you won't give the checks back and I can't present my checks on that statement, but I will go to Newbern and get in touch with Richmond and find out what to do and will likely be back Monday or Tuesday.'

Monday came and he didn't come and I think it was Wednesday and I was busy about noon time, and another gentleman came down the line, W. T. Clements, and he says 'I am a representative of the Federal Reserve Bank of Richmond. I have some checks on your bank and I want to present them,' and he says 'What time do you go to dinner?' and asked me where the hotel was, and he said he would go to dinner first. We walked back to the hotel and about two o'clock he came back and we got to talking, and I told him I was going to do the same thing I had told the other gentleman. If he handed to me such checks as were good and regular they would be paid, and if those checks

were handed to me he would have to take what I would give him. He said 'I will just leave it on your counter and what would you do with it then?' I said 'I will mail it to Richmond, and if Richmond mails it back to me I will give it to the Clerk of the Court, and I know they will sue me and it will be in the hands of the Clerk of the Court, and he will give that back to them, and you will be right back where you are.' And he said 'My instructions are not to let these checks get out of hands unless you are going to pay me in cash.' And he said 'I want to present them to you.' And he stood off about as far as the young lady and he took one check out of his book for $1.50 and he held it up to the window or where I could see the signature, and he says, 'That check good?' I said put 'That check in the window and we will pay it.' That was about the substance of the conversation. He asked me how and I told him 'lawful payment' and he put that check up and said 'That is all, sir, I will be back every day,' and I said 'You see that Ford car out there? That belongs to the Bank of Pamlico and here is the chauffeuer, and as long as you want to stay in Pamlico and want to present checks I will entertain you.' He said 'It will be after banking hours when we get there,' and he said 'If we can find the man with the key I will waive all banking hours,' and he got off the same distance and we went through the same thing and he put that check back in his book and he and I went back to Bayboro, and it was too late to go to Oriental. The next morning, finally he said 'I tell you—I believe the best thing for you to do, and it would give us less trouble, would be for you to wire your name to Mr. Page and join the other banks,' and he said 'I will have to come back here every day and we are not getting anywhere.' I talked to the president and he said to let's do that, so I wired to have our name added to the enjoiners and the Federal Reserve Agent said he wanted to go to Newbern. I carried him and I told him not to stamp our checks with that stamp that I would give him notice right there and then not to stamp them, and he said he would go talk to Mr. Fry, and later on he said he talked to Mr. Fry, and I asked him if he stamped our checks and he

said 'I can't tell you what I have done.' But he told me when he went to Bayboro he had some eighteen thousand dollar's worth of checks."

I then had about ten or twelve thousand dollars in the vault. In Pamlico County we do not use much currency. It is an agricultural county and they have educated the farmers that it was unsafe to keep money at home and have built up a bank from $22,000.00 deposits to a big institution. The farmers have check books and write checks for twenty-five and thirty cents. The checks brought by the agent of the Federal Reserve Bank were around $18,000.00. I don't think I could have paid those checks in cash. I could not do business if checks were presented over the counter every day and cash demanded because my bank is the only bank in the County and has some customers who are large depositors and deposits fluctuate very greatly.

Some days we don't have many checks and on other days they amount to as much as $15,000 to $30,000. We carry our balances with the banks with whom we make our reserve deposits for the purpose of obtaining credit. If these checks come in through the mail and we don't have a cash reserve, we execute a note and have our correspondent to discount that and hold the draft until we have sufficient funds there to take care of it. We ordinarily make anywhere from $200 a month to $3000 a year out of exchange charges. The average non-member bank in my section makes about $100 per month out of exchange charges.

The checks which were presented to me were stamped and sent back to our customers. They were stamped on the face and signed by Mr. W. T. Clements. The stamp was practically the same thing as testified by Mr. Page.

I have been in the banking business twelve years. I am a member of the State Bankers' Association, I have a general knowledge of banking business in Eastern North Carolina. The banks in Eastern North Carolina do not carry sufficient funds in their vaults each day to pay the checks drawn against them if

presented over the counter. I do not think any bank does anywhere. If the Federal Reserve Bank were allowed to collect checks and present them day by day and demand cash in payment, the effect would be that the banks would have to discount their loans to the extent that they could meet these checks—whatever per cent was necessary. I do not believe the banks could continue to do business under that custom. It would be a hardship because reserves with correspondents could not be used to pay checks and would have to be shipped back. That would have a very damaging effect on the banking system in the Eastern part of the State. The vaults of the small country banks are not any too safe and they can't afford to carry burglarly insurance. I paid out over $700.00 in insurance last year.

When Mr. Clements was at my bank he only took one check out of his envelope and presented it, but he stamped every one of the checks he had. He only showed one check and it was for $1.50. He told me he had $18,000 worth of checks. I experienced the effect of the Federal Reserve Bank returning checks to our customers marked dishonored because they had not been paid in cash. Kept me busy about a week or ten days. My customers would call me over the telephone and say: 'Look here, I got notice that my check had not been paid, what is the matter? And I would tell them that I could not explain this matter over the telephone and that it was a matter in which our bank was fighting to retain a certain part of its income which we thought it was absolutely entitled to, and that I would tell them more about it when they came to the bank. It interferred with our business, and was very annoying. If the Federal Reserve Bank were allowed to keep up day after day it would so affect our business that we would have to agree to remit at par or go out of the banking business. The bank could not afford to have an agent of the Federal Reserve Bank come in there day after day and carry off large sums of money. That would greatly hurt the reputation of the bank. If that sort of business were kept up I think it would precipitate a run on the bank.

I don't think that it would benefit the customers of our bank for us to go into the par clearance scheme. It would not mean a dollar in their pockets. No citizen of North Carolina would receive any benefit by reason of our giving up an income of $3000.00 a year. Par clearance would have an effect on bank balances between North Carolina and Virginia. After we became a party to the injunction suit, the Federal Reserve Bank held a lot of our checks, and I got a letter from the Federal Reserve Bank a week or so after, stating that these checks were in their hands and they could not return them unless I would write them to return them or remit at par. I wrote Mr. Fry we would remit at par and to send the checks on and I remitted at par two or three weeks. I checked on Winston-Salem, North Carolina, and Hanover National Bank of New York. Mr. Fry wrote me a letter and said unless I would furnish him Richmond, Baltimore, Philadelphia or New York exchange, or checks bearing the I. C. Symbol he would have to take our name off the list; and I told him our correspondents were doing enough for us and we could not furnish the I. C. Symbol, and he had our name taken off the par list himself. That was after we had agreed to remit at par. When we entered the injunction suit they had seven or eight thousand dollars worth of checks that we had not been able to get out of their hands, and they claimed they were restrained from returning them and the only way they could get rid of them was to send them to us for payment in cash or have our consent to return them. I wrote and told them to send the checks on and I would pay for them at par, and finally he said he had to have this Northern exchange or a check of a member bank bearing the I. C. Symbol, and I just wrote him back and told him our correpondents were doing enough and if he saw fit, to take us off the par list.

In my opinion, this par clearance movement of the Federal Reserve Bank would force bank balances out of North Carolina into some other reserve center, either Richmond or North of Richmond.

CROSS-EXAMINATION.

I have a general knowledge of banking business in Eastern North Carolina. Jones, Pamlico, Carteret, Craven and some other counties. In June, 1920, our bank had a capital of $30,000. We then had on deposits some $900,000. That was in the potato season. We have not that much now. In our three banks we have right around a half million dollars. That is all the banking facilities in our county. Our average line of deposits in normal conditions is $500,000 or under. Right now we have $375,000 to $400,000 in all three banks. We have educated our people to use checks instead of cash. Not much currency moves out of the county. Prior to this we made about $3,000 per year on exchange. I don't think it would prevent us from paying a dividend not to get exchange.

Agents of the Federal Reserve Bank came to see me on two occasions. They did not frighten or intimidate me. They said they had the checks and wanted to know if they presented them if I would pay them and I just told them. They had gathered up $18,000 of our checks, which is a fairly good quantity. It was nothing unusual for $12,000 or $15,000 to come in through the mail. There isn't any way to get money out of that county except by a check on our bank. The rate of exchange depends on whom we were remitting to. When I started in the banking business I didn't know a thing about the business, and what banking experience I have has been learned from other banks or bankers. At Newbern the bankers taught me how to charge exchange, and the folks that taught me how to charge are the folks that are now wanting to do away with it. We were in business four years before we made $700.

P. C. COLLINS, being duly sworn, testified:

DIRECT EXAMINATION.

"I live in Hillsboro and am Cashier of the Bank of Orange. I have been in the banking business twenty years. One of the

agents of the Federal Reserve Bank came to Hillsboro on three different days. I think it was the third day after the injunction was obtained. They had never visited us prior to the injunction. We had had some correspondence in regard to par clearance and I wrote them about November that we would go on par clearance November 15th and we were on par clearance from November 15th to early in February. The three visits spoken of were in February. A young man came in the bank one morning, called for me, and said he was Mr. Tucker, claimed to be from the Federal Reserve Bank of Richmond. I asked him in and we talked, and he told me something about wanting to clear his items at par. He told me he had some checks on us. I told him I did not know whether he was from the Federal Reserve Bank or not——that I did not doubt his word but that I did not know anything about it. We talked quite a little while and he asked me where the long distance telephone was. I told him and shortly someone called me on the 'phone and said it was Mr. Fry, of the Federal Reserve Bank of Richmond. Mr. Fry gave me a good deal of advice and I thanked him and told him we had attorneys for the purpose of giving us advice.

Mr. Tucker stayed about a day or two and came back. He did not present any checks on the first day. He had an envelope in his pocket. It looked like envelopes in which we had been getting our checks from the Federal Reserve Bank. The second day was very much a repetition of the first. I think one day had elapsed and he came back. At that time he had two letters but never presented any checks. He wanted to know if I would pay him the checks in cash. I told him no, if I knew he was from the Federal Reserve Bank. I am not certain whether it was the first or second day that I asked him if he did not know there was an injunction to prevent them from presenting these checks and he asked me if I belonged to it. I told him that I had joined the day before. On the third day he brought Mr. Little, an attorney from Raleigh. He and Mr. Little came back and sat down and pulled one check from an envelope and read a name from that check. I told him we had no such name on

our books. That was the nearest he came to presenting any check.

He and Mr. Little talked a good deal about making us remit at par. Said if we did not remit at par they were going to send a man over there every day to present the checks over the counter and get the cash. I told him I didn't know how they were going to do that, that we were a corporation formed under the laws of North Carolina and operating under the law just passed, and felt that that covered this matter entirely, and that was the last we had any trouble from them. I never told Mr. Tucker that I would pay him at all because I did not know he was a duly authorized agent. He came twice and I called his attention to the fact that an injunction had been issued and that I was a party to it.

Our bank went on the par list November 15th. Before that time we received virtually no checks through the Federal Reserve Bank, only Government checks. After that time ninety to ninety-five per cent of our checks came through the Federal Reserve Bank. We went on the par list in November because it looked like if we did not they would do exactly what they promised to do, send a man there every day with our checks or an accumulation of checks to make us pay the cash. We chose the lesser of the two evils. The putting us on the par list upset our reserve deposits, because we had all our arrangements made and we did not know exactly where we were, and it kept us on the anxious bench until it was settled. I know that the putting of the banks on the par list moved a great deal of money out of North Carolina. At that time nearly all of the smaller banks cleared through the clearing points of North Carolina and I think a great deal of it moved out of the State for the purpose of having it at the place to pay for these checks. We had to move a great deal of our money away from North Carolina to be in a position to meet any contingency. I think that if checks had continued to be presented at the counter day by day and cash demanded, it would have ultimately stopped our lending power. It would have put us out of business.

If this were done day after day there would not have been any bank there. If these checks were permitted to be returned marked "Dishonored," people who had their money in our bank would withdraw it because they would not be subjected to the inconvenience of discredit. You might explain it to some men but some would get dissatisfied and take their money out and never give you a chance to explain. They would just withdraw their names without a word. There would be no way of estimating the extent of the damage that would be done us. It might result in putting us out of business entirely. I do not know how to estimate the damage. After the injunction the matter got settled. We got our checks through the old channels; we only get Government checks through the Federal Reserve Bank now. We make about $2,000.00 a year out of exchange. I think the man who draws a check pays the exchange. It is first paid by the merchant at the north or the man who buys the goods. In my opinion my customers absolutely do not save a penny by par clearance."

CROSS-EXAMINATION.

"When Mr. Tucker first called he did not show his credentials. I did not know whether he was an agent of the Federal Reserve Bank or not. I think that he was. Our bank had become a party to the suit on the day previous to his visit. I don't think he knew this until I told him. Mr. Tucker called on me about eleven o'clock. I don't know whether the injunction order had been served on the Federal Reserve Bank at that time or not. When Mr. Tucker told me that he was an agent of the Federal Reserve Bank I would not pay the checks in cash. I asked him if he was not afraid he would be arrested, and he brought Mr. Little so that if I did have him arrested he could get out."

RE-DIRECT EXAMINATION.

"I offered him exchange for the checks, but he said he could not take anything except the money."

M. E. HERRING, being duly sworn, testified:

DIRECT EXAMINATION.

" I live at Mt. Pleasant. I am Cashier of the Bank of Stanfield. That bank has a capital of $15,000. It commenced business on April 26, 1921. After we had been in business about a week a man came in and said his name was Mr. Tally and that he represented the Federal Reserve Bank, and he presented his credentials which identified him. He said 'I have got some checks. You do not clear at par and I will have to present them over the counter and demanded the cash.' I said 'we can pay the cash now, but I don't know for how long we will do that way,' and he presented the checks and I paid the cash, and he asked me to sign a paper to clear at par and I refused to sign it.

A couple of weeks before he came he mailed checks and we cleared at par, and I wrote him and told him we would have to refuse to clear at par and then he commenced presenting them. After I refused to clear at par, they presented the checks over the counter.

Mr. Tally only made one trip and in about a week Mr. Henderson came up from Charlotte and informed me that he had traded with Mr. Tally and showed credentials that he was representing the Federal Reserve Bank, and I went to paying him, and he came there from once to three times a week. He came out from Charlotte and kept it up for sometime, three or four weeks. Then Mr. Parker of the First National Bank of Albemarle came up and showed his authority from the Federal Reserve Bank of Richmond, and I paid the checks which he presented. He came out from one to three times a week. After a few weeks Mr. Henderson of Charlotte came again and I said 'How come you are coming again?' He said 'I have come

to talk with you a little.' I asked him if he had some checks and he said 'No, you have joined the injunction people,' and I said 'No sir,' and he said 'What is the trouble? They have not sent me any checks,' and I said 'Mr. Parker of Albemarle is bringing them out,' and he said 'I came to see what was the trouble. Mr. Tally came back to Charlotte and said it cost him about $20.00 to make the trip and wanted to know what I would go for, and I told him $7.50, and Mr. Tally said it is worth more than that, I will give you $10.00 a trip,' and he said 'He has been giving me $10.00 a trip and I have not heard anything from him in a couple of weeks and I came to see what was the trouble. I don't understand why they went and got Mr. Parker and didn't say anything to me. They treated me mean, and I am going to Richmond and tell that bunch what I think of them.' And I kept it up with Mr. Parker. The checks which he presented would aggregate from three to eight hundred dollars at each presentation.

We only charged one eighth of one per cent for remitting through the mail. That would not be over $2.00 on the checks presented at any one time.

The letters which you hand me are letters from the Federal Reserve Bank accompanying checks. Those letters and the checks with them were all presented and paid on June 18, 1921."

Plaintiffs introduce in evidence the letters marked Exhibit I. Exhibit I is as follows:

PLAINTIFFS EXHIBIT I.

FEDERAL RESERVE BANK OF RICHMOND

June 11th, 1921.

Bank of Stanfield,
Stanfield, N. C.

Gentlemen:

Under CLEARING ARRANGEMENTS made with you, we enclose the cash items listed below

Protest dishonor of all items over $10, except those

stamped on their face: (N. P. 68-3) or bearing similar authority of a preceding bank endorser.

WIRE non payment of items $500 or over GIVING THE ENDORSER next preceding ours.

This letter should be remitted for upon day of receipt. Dishonored items must be returned on day of receipt; items held for protest must be returned not later than the next business day.

Very truly yours,

FEDERAL RESERVE BANK OF RICHMOND

$25.00
34.57

39.57
Paid June 18 1921.

FEDERAL RESERVE BANK OF RICHMOND

June 13, 1921.

Bank of Stanfield,
Stanfield, N. C.

Gentlemen:

Under CLEARING ARRANGEMENTS made with you, we enclose the cash items listed below

Protest dishonor of all items over $10, except those stamped on their face: (N. P. 68-3) or bearing similar authority of a preceding bank endorser.

WIRE non payment of items $500 or over GIVING THE ENDORSER next preceding ours.

This letter should be remitted for upon day of receipt. Dishonored items must be returned on day of receipt; items held for protest must be returned not later than the next business day.

Very truly yours,

FEDERAL RESERVE BANK OF RICHMOND

$47.30
10.14

$57.44
12.81
44.83
12.53
26.57
18.50
5.00
5.00

$182.68
Paid June 18, 1921.

FEDERAL RESERVE BANK OF RICHMOND

June 15, 1921.

Bank of Stanfield,
Stanfield, N. C.
Gentlemen:

Under CLEARING ARRANGEMENTS made with you, we enclose the cash items listed below

Protest dishonor of all items over $10, except those stamped on their face: (N. P. 68-3) or bearing similar authority of a preceding bank endorser.

WIRE non payment of items $500 or over GIVING THE ENDORSER next preceding ours.

This letter should be remitted for upon day of receipt. Dishonored items must be returned on day of receipt; items held for protest must be returned not later than the next business day.

Very truly yours,
FEDERAL RESERVE BANK OF RICHMOND

$5.00

$5.00

$ 71.58
45.51

$117.09

$ 5.00
19.69
4.20
42.69

$71.58
Paid June 18, 1921.

FEDERAL RESERVE BANK OF RICHMOND

66—924 June 16, 1921.

Bank of Stanfield,
Stanfield, N. C.

Gentlemen:

Under CLEARING ARRANGEMENTS made with you, we enclose the cash items listed below

Protest dishonor of all items over $10, except those stamped on their face: (N. P. 68-3) or bearing similar authority of a preceding bank endorser.

WIRE non payment of items $500 or over GIVING THE ENDORSER next preceding ours.

This letter should be remitted for upon day of receipt. Dishonored items must be returned on day of receipt; items held for protest must be returned not later than the next business day.

Very truly yours,
FEDERAL RESERVE BANK OF RICHMOND

$29.09
Paid June 18, 1921.

FEDERAL RESERVE BANK OF RICHMOND

June 17, 1921.

Bank of Stanfield,
Stanfield, N. C.

Gentlemen:

Under CLEARING ARRANGEMENTS made with you, we enclose the cash items listed below

Protest dishonor of all items over $10, except those stamped on their face: (N. P. 68-3) or bearing similar authority of a preceding bank endorser.

WIRE non payment of items $500 or over GIVING THE ENDORSER next preceding ours.

This letter should be remitted for upon day of receipt. Dishonored items must be returned on day of receipt; items held for protest must be returned not later than the next business day.

Very truly yours,
FEDERAL RESERVE BANK OF RICHMOND

$12.50	$12.50
	5.00
	6.96
	6.50
	128.52
	$159.18

Paid June 18, 1921.

"The agents brought those. They would bring different letters in a bunch. I cannot say just how long they would hold the checks before presenting them.

The paper which you show me is a check that went into the hands of the First National Bank at Albemarle and was endorsed by the Cashier there and forwarded to the Wachovia Bank & Trust Company at Winston-Salem. They mailed it in to the Federal Reserve Bank at Richmond and the Federal

Reserve Bank returned it to the Wachovia Bank & Trust Company with an attached notice that we refused to pay our checks over the counter. I wrote the Federal Reserve Bank asking them not to attach this to our checks, for I never had refused to pay all checks presented over the counter."

The plaintiffs introduce in evidence the slip attached to the check which is marked Exhibit J. The notice attached is as follows:

PLAINTIFFS EXHIBIT J.

> "We are unable to handle this check because the drawee bank has refused to remit at par for checks sent to it by mail, and has likewise refused to make payment in money for checks presented to it, if such checks are drawn since February 5, 1921, and has united with other non-member state banks in a suit in which the plaintiffs have secured a temporary injunction from the Superior Court for Union County, N. C., restraining us from returning as dishonored, checks drawn on the plaintiffs in this suit, since February 5, 1921, even though such checks have been presented by us to the drawee bank and payment in money demanded and refused. The restraining order applies only to checks drawn since February 5, 1921, on the banks which are parties to this suit, a list of which will be given in our circular letters upon the subject."

Counsel for the defendant admit that this slip was used by the Federal Reserve Bank of Richmond and that it is the kind of slip attached to a number of checks returned under the circumstances stated in the slip.

CROSS-EXAMINATION.

"My bank is at Stanfield on the Norfolk-Southern Railroad, twenty-six miles from Charlotte. We have only one train a day from Charlotte. Oakboro is the nearest town to the East. Norwood, Mount Gilead, and Troy are on the railroad to the East. Albemarle is eighteen miles away. The only way

to go to Albemarle is over the highway in a car. Stanfield has about one hundred and fifty to two hundred people. There is a good road to Albemarle. The train from Charlotte arrives about eight o'clock in the morning. The West bound train arrives about two o'clock.

Those checks introduced are not all the checks I paid across the counter. They are the checks that I paid on one day. $800.00 was the largest amount I was ever called on to pay. The collectors came from one to three days a week. They began to come one a week. The bank had been organized two or three weeks before they began to come. They began to come before we joined in this suit. The bank was not embarrassed by these checks. It had just recently been organized and had on hand a good deal of money and did not have it loaned out. I could have kept up paying in cash as long as they came up there, but it would have kept us from making any money. The bank was embarrassed by the fact that the presentations were made. It was embarrassed, although the payments did not aggregate over $800.00. The payments across the counter in the ordinary course of business are from a few dollars to a couple of thousand. At the time these checks were being presented, we were keeping twenty-five to thirty per cent of the deposits in the vaults. We wanted to keep from two thousand to five thousand dollars, but on account of paying the checks we had run down low, and I was going to have money sent over from Albemarle to keep from taking the gold. I could have gotten along without getting money if the checks had not been presented over the counter. I would not have had to have gotten money to put in the vault if they had not been presented. We had to keep gold and to keep currency. People deposit gold with us and demand it in payment. We do not use it any in the regular course of business, but hold it as a part of our reserves. I would have had to get money to carry on the regular course of business. If I hadn't had to pay the checks over the counter, I would have had enough. We paid interest on the certificates of deposit issued for the gold. We were using the

gold as a part of the reserve. I would have been embarrassed if I had been called upon by a customer to pay the gold and had not had it. It was not easy to keep the currency on hand to pay the checks over the counter. I can't say that it embarrassed me. I did have to get out and get some currency where I otherwise would not have had to. I did not like to do it, but I was not going to have them presenting checks and not getting the money."

RE-DIRECT EXAMINATION.

"If the presentation over the counter had been kept up, I would have had to keep drawing money and bringing it out there. We would have been afraid to go ahead and do the business we do."

C. B. ADAMS, being duly sworn, testified:

DIRECT EXAMINATION.

"My name is C. B. Adams. I am a son of the late Henry B. Adams of this bar. I am Vice President of the Farmers & Merchants Bank of Monroe. I have been engaged in the banking business nearly seventeen years. I am one of the members of the Committee of Defense of the North Carolina State Bankers' Protective Association. I have been a member of the North Carolina Bankers' Association eight or ten years. I have been in touch with banking throughout this section of North Carolina during the past seventeen years. I was Assistant Cashier of the Bank of Union before I went with the Farmers & Merchants Bank. I have been with the Farmers & Merchants Bank about eleven years, first as Cashier and then as Vice President.

Prior to the par clearance of the Federal Reserve Bank of Richmond of November 15, 1920, it was the custom for non-member banks in North Carolina to make a charge for remitting for checks drawn on them. These checks usually

came through some national bank or clearing house. The charge varied. We ourselves were remitting most of our items for 80 cents on the hundred. Some of the banks charge as high as one-fourth of one per cent. We deducted the exchange charge from the remittance which we sent to the bank or clearing house from which we got the items. We sent a check for the gross amount less the exchange. Primarily, the exchange was paid by the bank or clearing house to which we made the remittance. I do not know who ultimately paid the charge. I have been told that the exchange in the past has been added to the manufacturing cost or the sale cost, and finally passed on to the retailer or buyer.

If a customer of our bank pays any part of the exchange he pays it in the price of goods. He does not pay any more exchange by reason of the fact that we charge it. Take for instance a clothing manufacturer. He figures in the suit of clothes the amount of exchange as a part of his overhead expense just like taxes or insurance.

My understanding is that the banks in the cities and commercial centers charge this exchange on the checks which they receive for collection. They have continued to charge this exchange or collection charge, notwithstanding the fact that the Federal Reserve Bank is collecting its checks at par. We pay some of the national banks exchange on items. I have no specific information, except hearsay, as to what banks charge for collecting checks which are drawn against our bank. I am in touch with banking conditions in New York in a general way. The banks in New York got up a par list and sent it out to their correspondents and it shows which ones take checks at par and which ones charge exchange, and a list of that kind has been sent to our bank. The banks in Atlanta charge one-eighth of one per cent on all items that they accept drawn on banks outside of the city of Atlanta. My opinion is that the banks in Richmond are charging and have been charging one-fourth of one per cent on the checks that are drawn on non-member

banks in North Carolina. I don't know what the rates are in New York. They are not as high. They do make a charge for collecting checks.

We were put on the par list on November 15, 1920. We never did consent to sign the agreement. Mr. Wheelwright came to see us and tried to persuade me that it was to our advantage to sign this agreement, but we could not get together on it at all. He said we might as well sign it, that we were going to have to do it, and he would hate to present checks on us. He said, 'You might as well go on' and I said, 'We are not going to sign any agreement today or any time.' He wanted to know why and I said 'Well, your wanting me to sign the par list is my reason for not doing it.' I don't know what day that was. Later on I got a letter from Mr. Fry on the question of remitting at par. I wrote him that I was rather surprised at them for writing and asking us to sign the agreement, in view of the fact that we were going to have to remit at par 'regardless,' and that we did not care to sign.

Prior to the time that they put the name of our bank on the par list, none of our checks came through the Federal Reserve Bank of Richmond, except a few checks in payment of obligations due the Government. After they put us on the par list, practically all our checks came through the Federal Reserve Bank. I do not remember having gotten a check from any other bank from the time we were put on the par list until we started the injunction suit, except the American Trust Company at Charlotte, with whom we carry a reciprocal account, and those items were practically negligible. 95 to 98 per cent of our checks came through the Federal Reserve Bank after we were placed on the par list.

On November 15th, the Federal Reserve Bank placed all North Carolina banks on the par list. It did not give the name of the banks but said all the banks in North Carolina would be on the par list on November 15th.

Since we became a party to this suit, only those checks that are in payment of Government obligations have come through the Federal Reserve Bank, with the exception of a few checks that were dated prior to February 5th.

With reference to the statement that the banks in North Carolina received benefit from this par clearance system, I will state that my bank has not received any benefit from having these checks cleared through the Federal Reserve Bank. I think that as a matter of fact the reverse is true. My reason is this: It has been our custom, and the custom of all state banks, practically all of them, to clear their items through some large bank conducting a clearing department. There is no such thing as getting them to clear our checks for nothing. We have got to pay them each time exchange charge or by keeping with them sufficient amount to justify them in handling this account. In fact the balance we are keeping has got to more than justify them on account of the fact that they are analyzed each month, and the bank reserve—like on this month there would be a loss in handling, the loss is charged to the depositor—that is the way we have been paying for the clearing. It was that way prior to the time the Federal Reserve Bank was organized and that way since. The disadvantage of having our checks come through the Federal Bank is this: It delays the time that it takes to collect a check. For instance, if we send a check to the American Trust Company at Charlotte who clears our items, and that check is drawn on Wadesboro, if we mail that to them today, prior to eleven o'clock, or any time of the day, it would be in Charlotte tomorrow and Wadesboro tomorrow night. If that check is cleared through the Federal Reserve Bank we would have to send the check to Charlotte, from Charlotte it would have to go to Richmond, and from Richmond it would have to go to Wadesboro, and in the meantime there is a loss of time. Our line of credit is based upon the average collected balance, consequently any delay in time would have the tendency to lower

the amount we could borrow from the bank. Of course no bank can make any money except by a lapse of time and anything we can save in collecting our checks would be reserve and delay would be that much loss. In addition to that, it was also my understanding that if the American Trust Company sends a check to Richmond on the Bank of Wadesboro that the Federal Reserve Bank of Richmond delays the crediting of the American Trust Company on that check for three days. I believe that is the practice of the Federal Reserve Bank for any check drawn on North Carolina, regardless of whether it is 25 miles from the line or anywhere in North Carolina, so we wouldn't have that same delay if those checks didn't go to the Federal Reserve Bank of Richmond.

For the foregoing reasons the handling of checks by the Federal Reserve Banks for our correspondents is no accommodation to us. The Federal Reserve Bank has never cleared any check for our bank. They cleared these checks for the members of the system. It is absolutely immaterial to me, except in the lapse of time, whether the American Trust Company sends any of these checks to the Federal Reserve Bank or not. The Federal Reserve Bank clears these checks for the American Trust Company and not for the Farmers & Merchants Bank. We pay the American Trust Company for this service by keeping a large reserve. We keep a balance with them in Charlotte of $50,000. Seven per cent of that money we have kept in Charlotte is going to be kept as a balance in Richmond by reason of the fact that we are keeping this money in Charlotte, as the Federal Reserve Act requires that seven per cent should be kept with the Federal Reserve Bank.

No customer of our bank to my knowledge has received any benefit by reason of checks being cleared at par while our bank was on the par list. I do not think that any customer of any of the non-member banks would receive any benefit by reason of the fact that they were placed on the par list.

I know from being told by one of the officers in one of the large clearing banks in North Carolina that in three days time that bank lost over a million dollars in deposits by reason of the par clearance order going into effect. I have heard of others. The bank that I refer to is the American Trust Company of Charlotte. The effect of the par clearance order on the reserve deposits of the average non-member bank in North Carolina would be to cause the reserve balances maintained by these banks to be taken from North Carolina to Richmond and other northern points. I do not know to what extent bank balances in North Carolina have been affected by the par clearance order. Any opinion would be a mere guess. I have some idea as to the amount of money moved out of the State.

The North Carolina State law requires a bank to keep six per cent of its deposits in the vault. That is about what is kept by the North Carolina banks. At certain seasons of the year when the demand is larger, for instance during the cotton season, we keep more. We have currency shipments coming in every day or two to avoid keeping more than necessary. We want to keep as much with our correspondents as we can in order to keep our credit lines open and get the interest from the balances. It is an advantage to a bank to keep its reserve deposits on interest with some correspondent bank. The amount of money we can borrow from a correspondent is based upon the average balances we maintain with it. As far as our banks are concerned, we keep more than the lawful reserves. It is very seldom we cut down on it for the fact is that we want to keep our credit lines as large as possible to meet any contingency that might arise and we get interest on the balances. It is not customary for banks to keep in their vaults a sufficient amount of money to pay their checks over the counter. Bank reserves—what they keep in their vault as well as what they keep with their correspondents—are governed by the law of averages, and anything that tends to up-set it tends to up-set the

equilibrium of the bank. It has never been customary wi
my knowledge for the banks in this section to carry suffic
cash to pay their checks over the counter. If banks
forced to do that, the average bank could make no mo
It would be impossible for it to exist and keep suffic
money on hand to pay checks over the counter. If the
eral Reserve Bank were allowed to assemble all of our ch
and present them over the counter day by day, we w
be injured to a very great extent unless we yielded to t
demand and went on the par list and remitted them
par. If the proposition were put up to us of going on
par list or having our checks presented over the cou
every day, there wouldn't be any choice. We would
to go on the par list. If the Federal Reserve Bank
Richmond were allowed to place all the banks in this S
on the par list and were allowed to present their ch
over the counter and demand cash for them, it would m
the monetary situation very strenuous. If all the b
in the country had to pay all their checks in money
their counters, we would have the most colossal panic
this country has ever known.

For the Federal Reserve Bank to send an agent to pr
checks over the counter is a more expensive method of
lecting than to pay one-eighth of one per cent. I
tell just how much more expensive that method is. Se
things must be taken into consideration. The amoun
checks that the agent could present in any one day a
bank would be one factor, but I am satisfied that it w
be a loss to the Federal Reserve Bank to collect chec
that way because they would have to pay a man a s
and pay his traveling expenses. It is very much of a
advantage to the Federal Reserve Bank to take cash r
than exchange in payment of checks. It is more troubl
possibly more expense to them to handle currency shipm
than an exchange check. A payment by a bank of tw
three thousand dollars in money would take more tim

count and the carrying charges on it would amount to more. The risk incurred in handling of funds I would think they would take care of by insurance. The risk would be greater in handling money than in handling an exchange draft. If the agent of the Federal Reserve Bank should be robbed of $15,000, the bank would lose that much money.

When we were remitting at par to the Federal Reserve Bank, that is between November 15th and the commencement of this suit, we remitted them New York exchange. When they presented the checks over the counter we proposed to give them New York exchange or any character of exchange they demanded. Our bank is fully solvent and our reserves are carried in solvent banks. I presume that the Federal Reserve Bank knows that we are solvent and that our reserves are carried in solvent banks.

In my opinion, the effect of returning of checks as dishonored for which we have offered exchange works serious injury upon the banks. It would operate to discredit the bank in the eyes of the depositors. A great many of them who deposit in this bank don't know enough about business to take in the different reasons that might be given. If they got one of their checks back with that explanation on it they would come up right away and want to know what was the matter, and some people you could not explain that thing to. A great many people, when the checks came back to them, wouldn't tell you a thing about it, but would come and get their money. They wouldn't say anything about it to you because they wouldn't want you to know that they were withdrawing their business from the bank. It would not be possible to ascertain the damage done our bank by reason of the returning of the checks as dishonored.

I don't see how par clearance benefits the Federal Reserve Bank at all. It benefits the members of the Federal Reserve Bank. When the Federal Reserve Bank forces the State banks to remit at par and deprives the State banks of their right to deduct a reasonable fee for services rendered, this

accrues to the benefit of the member banks which send thei checks to the Federal Reserve Bank for collection. On way of looking at it is that par clearance takes the shar of the collection charge away from the State bank, whic the State bank has been receiving, and gives it to the mem ber banks of the Federal Reserve system. It denies th State banks the privilege of charging the member bank anything at all for the services rendered, and the membe banks do not have to pay the charge which they formerl paid."

CROSS-EXAMINATION.

"The paper shown me is the bulletin published by th New York Clearing House showing the collection charge made by the New York banks."

This bulletin is marked Exhibit K, and is introduced i evidence by the plaintiffs. Exhibit K is as follows:

PLAINTIFF'S EXHIBIT K.

New York Clearing House

April 10th, 192

Dear Sir:

We hand you below a copy of the Rules an Regulations Regarding Collections Outside of the Cit of New York, as revised by the Clearing House Commi tee April 6th, 1920, and which become effective Ma 1st, 1920.

For your convenience, copies of the latest schedul of the Federal Reserve Bank of New York referred t in Sections 4 and 6 are appended.

By order,

JAMES A. STILLMAN,

Chairman, Clearing House Committee.

WILLIAM J. GILPIN,

Manager.

Rules and Regulations Regarding Collections Outside of the City of New York

(Effective August 12, 1918; Amended Sept. 3rd, 1918; Feb. 10th, 1919; April 6th, 1920, Effective May 1st, 1920.)

Pursuant to authority conferred upon it by the Constitution of the New York Clearing House Association, the Clearing House Committee of said Association establishes the following rules and regulations regarding collections outside of the City of New York (except as to items on clearing non-members), by members of the Association, or banks, trust companies, or other clearing through such members, and the rates to be charged for such collections, and also regarding enforcement of the provisions hereof:

Sec. 1. These rules and regulations shall apply to all members of the Association, and to all banks, trust companies or others clearing through such members, but not branches in foreign countries of member institutions. The parties to which the same to apply are hereinafter described as collecting banks.

Sec. 2. For all items deposited by or collected for the account of the Governments of the United States, the State of New York or the City of New York, from whatever source received (but not checks, warrants, etc., issued by said Governments and deposited by or collected for the account of the banks' other customers), the charge shall be discretionary with the collecting banks.

Sec. 3. For checks or drafts drawn on banks, bankers and trust companies, and for all other items, the charges shall be not less than those prescribed for the respective points in the following schedule, subject to the provisions of Sections 4, 5 and 6:

STATES	CHECKS OR DRAFTS DRAWN ON BANKS, BANKERS AND TRUST COMPANIES	BANKERS' ACCEPTANCES	ALL OTHER ITEMS
†Alabama	1/10 of 1%	§1/40 to 1/10 of 1%	1/10 of 1%
Birmingham	1/40	Discretionary	1/10
†Arizona	1/10	1/40	1/10
Arkansas	1/20	1/40	1/10
Little Rock	1/40	Discretionary	1/10
California	1/10	1/40	1/10
Los Angeles	1/20	Discretionary	1/10
San Francisco	1/20	"	1/10
Colorado	1/10	1/40	1/10
Denver	1/20	Discretionary	1/10
Connecticut	Discretionary	1/40	1/10
Delaware	"	1/40	1/10
District of Columbia	"	1/40	1/10
†Florida	1/10	§1/40 to 1/10	1/10
Jacksonville	1/40	Discretionary	1/10
†Georgia	1/10	§1/40 to 1/10	1/10
Atlanta	1/40	Discretionary	1/10
Idaho	1/10	1/40	1/10
Illinois	1/20	1/40	1/10
Chicago	1/40	Discretionary	1/10
Indiana	1/20	1/40	1/10
Iowa	1/20	1/40	1/10
Kansas	1/20	1/40	1/10
Kansas City	1/40	1/40	1/10
Kentucky	1/20	1/40	1/10
Louisville	1/40	Discretionary	1/10
†Louisiana	1/10	§1/40 to 1/10	1/10
New Orleans	1/20	Discretionary	1/10
Maine	Discretionary	1/40	1/10

Maryland		1/40	1/10
Baltimore	"	Discretionary	1/10
Massachusetts	"	1/40	1/10
Boston	"	Discretionary	*Discretionary
Michigan	1/20	1/40	1/10
Detroit	1/40	Discretionary	1/10
Minnesota	1/20	1/40	1/10
Minneapolis	1/40	Discretionary	1/10
St. Paul	1/40	"	1/10
†Mississippi	1/10	§1/40 to 1/10	1/10
Missouri	1/20	1/40	1/10
Kansas City	1/40	Discretionary	1/10
St. Louis	1/40	"	1/10
Montana	1/10	1/40	1/10
Nebraska	1/10	1/40	1/10
Omaha	1/40	Discretionary	1/10
Nevada	1/10	1/40	1/10
New Hampshire	Discretionary	1/40	1/10
New Jersey	"	1/40	1/10
Hoboken	"	Discretionary	*Discretionary
Jersey City	"	"	* "
New Mexico	1/10	1/40	1/10
New York	Discretionary	1/40	1/10
Buffalo	"	Discretionary	1/10
New York City	"	"	Discretionary
†North Carolina	1/10	1/20	1/10
North Dakota	1/10	1/40	1/10
Ohio	1/20	1/40	1/10
Cincinnati	1/40	Discretionary	1/10
Cleveland	1/40	"	1/10
Oklahoma	1/10	1/40	1/10
†Oregon	1/10	1/40	1/10
Portland	1/20	Discretionary	1/10

STATES	CHECKS OR DRAFTS DRAWN ON BANKS, BANKERS AND TRUST COMPANIES	BANKERS' ACCEPTANCES	ALL OTHER ITEMS
Pennsylvania	Discretionary	1/40	1/10
Philadelphia	"	Discretionary	*Discretionary
Pittsburgh	"	"	1/10
Rhode Island	"	1/40	1/10
†South Carolina	1/10	1/20	1/10
South Dakota	1/10	1/40	1/10
†Tennessee	1/10	§1/40 to 1/10	1/10
Memphis	1/40	Discretionary	1/10
Nashville	1/40	"	1/10
Texas	1/10	1/40	1/10
Dallas	1/20	Discretionary	1/10
El Paso	1/20	"	1/10
Houston	1/20	"	1/10
Utah	1/10	1/40	1/10
Salt Lake City	1/20	Discretionary	1/10
Vermont	Discretionary	1/40	1/10
Virginia	1/40	1/40	1/10
Richmond	Discretionary	Discretionary	1/10
†Washington	1/10	1/40	1/10
Seattle	1/20	Discretionary	1/10
Spokane	1/20	"	1/10
West Virginia	1/20	§1/40 and 1/20	1/10
Wisconsin	1/20	1/40	1/10
Wyoming	1/10	1/40	1/10

*See Section 6. †See Section 4 (B). §See Bankers' Acceptances Schedule.

Sec. 4. (A) The charge for checks and drafts drawn on banks, bankers and trust companies located in Federal Reserve cities and cities where Federal Reserve Bank branches are at present or may hereafter be established, shall be governed by the "schedule showing when the proceeds of items will become available," as published by the Federal Reserve Bank of New York from time to time; that is to say, for such items on said cities where immediate credit is given and for such items which become available one day after receipt, the charge shall be discretionary; for such items available two days after receipt, the charge shall be 1-40 of 1 per cent; for such items available four days after receipt, the charge shall be 1-20 of 1 per cent; and for such items available eight days after receipt, the charge shall be 1-10 of 1 per cent. (For schedule, see page 5).

(B) Whenever the Federal Reserve Bank of New York shall add to its par list as an all-par state, any state not now listed thereon as such, the charge for checks and drafts drawn on banks, bankers and trust companies located in such added state (except in cities having Federal Reserve Banks and their branches) shall thereupon be automatically fixed to correspond with, and be governed by, the charges specified in (A) of this Section 4, according to the said "Schedule showing when the proceeds of items will become available," as published by the Federal Reserve Bank of New York.

Sec. 5. In case the charge upon any item at the rates above specified does not equal ten (10) cents, the collecting bank shall charge not less than that sum; but all items received in any one deposit and subject to the same rate, may be added together and treated as one item for the purpose of determining the amount of exchange to be charged.

Sec. 6. (A) On acceptances of banks, bankers, and

trust companies taken by member or clearing non-member institutions the charge shall be governed by the "Schedule showing when the proceeds of bankers' acceptances will become available," as published by the Federal Reserve Bank of New York from time to time; that is to say for such items for which credit is available at the Federal Reserve Bank of New York on the day of maturity, the charge shall be discretionary; where credit is available at said bank one or two days after maturity 1-40 of 1 per cent; where credit is available at said bank three or four days after maturity, 1-20 of 1 per cent; where credit is available at said bank later than four days after maturity, 1-10 of 1 per cent. (For schedule, see page 6.)

(B) All notes or other time obligations, not provided for in Sub-division A of this Section, purchased by member of clearing non-member institutions payable elsewhere than in New York City, shall be subject to a charge of not less than 1-10 of 1 per cent, provided, however, that for notes or other time obligations purchased or discounted by any collecting banks, payable elsewhere than in New York City, but with respect to which, the maker, endorser or guarantor; or any bank, banker or trust company maintaining an account with the collecting bank, gives a written agreement at the time of such purchase or discount that payment is to be provided in New York City on date of maturity in New York funds at par, the charge shall be discretionary.

Sec. 7. The charges herein specified shall in all cases be collected at the time of deposit or not later than the tenth day of the following calendar month. No collecting bank shall, directly or indirectly, allow any abatement, rebate, or return for on account of such charges or make in any form, whether of interest on balances or otherwise, any compensation therefor.

Sec. 8. In case any member of the Association shall learn that these rules and regulations have been violated by any of the collecting banks, it shall immediately report the facts to the Chairman of the Clearing House Committee, or, in his absence, to the Manager of the Association. Upon receiving information from any source that there has been a violation of the same, said Chairman, or, in his absence, said Manager, shall call a meeting of the Committee. The Committee shall investigate the facts and determine whether a formal hearing is necessary. In case the Committee so concludes, it shall instruct the Manager to formulate charges and present them to the Committee. A copy of these charges, together with written notice of the time and place fixed for hearing regarding the same, shall be served upon the collecting bank charged with such violation, which shall have the right at the hearing to introduce such relevant evidence and submit such argument as it may desire. The Committee shall hear whatever relevant evidence may be offered by any person and whatever arguments may be submitted and shall determine whether the charges are sustained. In case it reaches the conclusion that they are, the Committee shall call a special meeting of the Association and report thereto the facts with its conclusions. If the report of the Committee is approved by the Association, the collecting bank charged with such violation shall pay to the Association the sum of five thousand dollars, and in case of a second violation of these rules and regulations, any collecting bank may also in the discretion of the Association be excluded from using its privileges directly or indirectly, and, if it is a member, expelled from the Association.

Resolved, that the foregoing rules and regulations are hereby established and adopted to take effect upon the 12th day of August, 1918.

Rulings and Interpretations of Some of the Foregoing Rules and Regulations

—A—

All applications for rulings on regulations regarding collection charges must be made in writing and addressed to the Clearing House Committee. All rulings will be printed and sent to members and other institutions connected with the New York Clearing House.

—B—

The Clearing House rules contemplate the charging of collection rates on all out of town items, from whatever source derived, unless otherwise provided in the rules. This ruling is made comprehensive in order to meet ingenious cases for evasion.

—C—

A ruling has been asked on the following:

A suggestion that drafts be deposited in other than discretionary cities with the correspondents of a New York Clearing House member in such cities, to the credit of such member, the depositor to receive credit in the New York institution at par immediately upon notification of such deposit, and to be allowed to draw against such credits the same as against New York funds:—

It is held that this and similar cases are in contravention of Clearing House rules. If exceptions were allowed the flood of cases would practically nullify the rules.

In the case of bought paper the broker should allow the charge as part of the purchase.

—D—

No exception is made to the general rules governing collection charges for items drawn "with exchange," or bearing similar phrases, or when stamped "collectible at par through any Federal Reserve Bank." Such items

must be charged for in accordance with the within named rates.

Counsel has ruled that checks stamped "payable in exchange" are not negotiable; therefore, such checks should not be accepted for deposit.

—E—

When items, subject to collection charges, are returned unpaid, the charges may be remitted.

—F—

Stocks, Bonds, and Coupons and drafts with Bills of Lading or collateral attached, are subject to the rules governing collection charges.

—G—

Any agreement, expressed or implied, entered into by a Clearing House member or by a non-member clearing through a member, with any individual, firm or corporation, by the terms of which it is intended that the rate of interest agreed to be paid on deposits is to offset and compensate for charges made on out of town checks, is violation of Clearing House rules, and if brought to the attention of the Committee will be dealt with as provided by Section 8 of the Clearing House rules and regulations relating to the charges on out of town items.

Copy of schedule referred to in Section 4, as published by the Federal Reserve Bank of New York.

FEDERAL RESERVE BANK OF NEW YORK

†Schedule showing when the proceeds of items will become available.

IMMEDIATE CREDIT

When received by 9 a. m.

New York Clearing House banks

Checks and warrants on Treasurer U. S., Washington

New York banks located above 59th street as follows:

- Republic Bank
- Bank of United States
- Broadway Central Bank
- Bronx Borough Bank and Branch
- Bronx National Bank
- Chelsea Exchange Bank
- Cosmopolitan Bank
- Public National Bank (Bronx Branch and Madison Ave. Br.)
- Twenty-third Ward Bank and Branch
- Tradesmen's Bank
- Nemeth State Bank
- Alvino & Figlio
- Perrera & Company
- Salvatore de Vita

Also

- Harriman National Bank
- Gotham National Bank
- Manufacturers Trust Co. (West Side Office)

Brooklyn Banks as follows:

- Bank of Coney Island
- First National Bank of Brooklyn
- Greenpoint National Bank
- Homestead Bank
- Kings County Trust Co.
- Manufacturers Trust Company (Brooklyn Office)
- Municipal Bank
- Mechanics Bank of Brooklyn (and Branches)
- Montauk Bank
- National City Bank
- Peoples National Bank
- Public National Bank (Graham Ave. and Pitkin Ave. Brs.)
- Ridgewood National Bank
- Anthony Sessa & Son (and Branches)
- American Trust Company (Montague St. Br.)

Federal Reserve Exchange Drafts

Federal Reserve Transfer Drafts

ONE DAY AFTER RECEIPT

New York City—Balance of Manhattan, when received by 9 a. m.

		No.
Boston	District	1
Philadelphia	"	3
Richmond	"	5
Baltimore	Branch of	5
Pittsburgh	" "	4
Buffalo	" "	2

TWO DAYS AFTER RECEIPT

		No.
Cleveland	District	4
Cincinnati	Branch of	4
Chicago	District	7
Detroit	Branch of	7
Atlanta	District	6
Birmingham	Branch of	6
Jacksonville	Branch of	6
Nashville	Branch of	6
Minneapolis	District	9
St. Paul	In	9
St. Louis	District	8
Memphis	Branch of	8
Louisville	Branch of	8
Little Rock	Branch of	8
Kansas City, Mo.	District	10
Kansas City, Kans	In	10
Omaha	Branch of	10

Banks in

Connecticut	New Jersey
Delaware	*New York
District of Columbia	*Pennsylvania
Maine	Rhode Island
*Maryland	Vermont
*Massachusetts	*Virginia
New Hampshire	

FOUR DAYS AFTER RECEIPT

		No.	Banks in	
Dallas	District	11	Alabama	*Minnesota
El Paso	Branch of	11	Arkansas	Mississippi
Houston	Branch of	11	*Georgia	*Missouri
New Orleans	Branch of	6	*Florida	North Carolina
Denver	Brnach of	10	*Illinois	*Ohio
Spokane	Branch of	12	Indiana	South Carolina
Salt Lake City	Branch of	12	Iowa	*Tennessee
Portland, Ore.	Branch of	12	*Kansas	West Virginia
Seattle	Branch of	12	*Kentucky	Wisconsin
Los Angeles	Branch of	12	*Michigan	
San Francisco	District	12		

EIGHT DAYS AFTER RECEIPT

Banks in	
Arizona	North Dakota
*California	Oklahoma
*Colorado	*Oregon
Idaho	South Dakota
*Louisiana	*Texas
Montana	*Utah
*Nebraska	*Washington
Nevada	Wyoming
New Mexico	

*Except banks in cities referred to in the first column.

March 1, 1920.

Copy of schedule, referred to in Section 6, as published by the Federal Reserve Bank of New York.

*Circular No. 147

FEDERAL RESERVE BANK OF NEW YORK

February 26, 1919.

Schedule showing when proceeds of bankers acceptances will be available if collected through the Federal Reserve Bank of New York.

On and after March 1, 1919, bankers acceptances will be received by the Federal Reserve Bank of New York for collection from its member banks and from Federal Reserve banks but bankers acceptances payable at New York Clearing House banks will not be received from Clearing House members.

By arrangements completed with all other Federal Reserve banks the proceeds of bankers acceptances payable in cities where Federal Reserve banks or their branches are at present or may hereafter be established will be available, subject to payment, on the day of maturity.

Proceeds of bankers acceptances payable elsewhere than in Federal Reserve or Federal Reserve branch cities will be available, subject to payment, one or more days after maturity, until further notice, in accordance with the following schedule:

District	Credit Available at Maturity for Items Payable in	Credit for Items Payable elswhere in District Available
1. Boston	Boston, Mass.	1 day after maturity
2. New York	New York, New York Buffalo, New York	1 day after maturity
3. Philadelphia	Philadelphia, Pa.	1 day after maturity
4. Cleveland	Cleveland, Ohio Cincinnati, Ohio Pittsburgh, Pa.	1 day after maturity
5. Richmond	Richmond, Va. Baltimore, Md.	2 days after maturity for Maryland, District of Columbia and Virginia. 3 days after maturity for West Virginia, North Carolina and South Carolina.
6. Atlanta	Atlanta, Ga. New Orleans, La. Jacksonville, Fla. Birmingham, Ala. Nashville, Tenn.	1 day after maturity for acceptances of member banks only. Acceptances of non-members when collected.
7. Chicago	Chicago, Ill. Detroit, Mich.	1 day after maturity
8. St. Louis	St. Louis, Mo. Louisville, Ky. Memphis, Tenn.	1 day after maturity

9. Minneapolis	Minneapolis, Minn. St. Paul, Minn.	1 day after maturity
10. Kansas City	Kansas City, Mo. Omaha, Neb. Denver, Col.	1 day after maturity
11. Dallas	Dallas, Texas El Paso, Texas Houston, Texas	1 day after maturity
12. San Francisco	San Francisco, Cal. Los Angeles, Cal. Spokane, Wash. Portland, Oregon Seattle, Wash. Salt Lake City, Utah	1 day after maturity

*Revised October 22, 1919, by adding Nashville and Houston; March 1, 1920, by adding Los Angeles.

"I understand that the New York banks will handle North Carolina checks at a cheaper rate than South Carolina checks by reason of the fact that the Federal Reserve Bank has forced the banks of North Carolina to perform the service of remitting for nothing. I don't know that the New York Clearing Houses make a cheaper rate if a State is all par than they do on a bank in a State which is not all par. I would not think so. The American Trust Company of Charlotte and a New York correspondent are the only two we have since par clearance was inaugurated. Our New York correspondent is a member of the Federal Reserve System, and so also is the American Trust Company. Some of them which we send for credit they collect through the Federal Reserve Bank and some of them they do not. We pay the American Trust Company for handling all of our checks. The American Trust Company can collect some of them at par through the Federal Reserve Bank. They can't make them immediately available, but collect them on a time schedule. But on a North Carolina check it would cost one-sixteenth of one per cent and the collection charge put on that check by the Federal Reserve Bank amounts to three-sixteenths of one-twentieth of one per cent at least. If the American Trust Company had to pay exchange to the drawee bank in addition to the time burden, it would make no difference to us because we keep a balance with the American Trust Company sufficiently large to justify them in collecting our checks for us. They usually allow us interest on our available balance. We have no agreement with the American Trust Company to keep a balance upon which they pay no interest. We are still doing business with them. They told us on what conditions they would handle our account and I told them if the account we kept with them was satisfactory to the extent they paid us interest they could do so, and if at any time it was not sufficient to justify them to pay interest, we didn't expect them to. I think the way the American Trust Company have told me that the basis upon which they analyzed their account of the exchange charge that went into the analysis

was one-eighth of one per cent upon the checks received on banks located outside of Charlotte.

It would take a longer time for the American Trust Company to collect a check on Wadesboro sent them by us through the Federal Reserve Bank system than it would to collect such check by sending it direct to Wadesboro. Wadesboro is twenty-six miles from Monroe. If a check were payable in another section of the country it could not necessarily be collected in a shorter time through the Federal Reserve Bank. In my opinion the largest portion of our checks are drawn on such places that it takes a longer time for them to be collected through the Federal Reserve Bank. It takes longer I think on the average. I should think that the American Trust Company would only collect through the Federal Reserve Bank those checks which can be collected equally as cheap in that way. There are a great many checks they can't handle. I think that other banks throughout this country would be inclined to follow the same method of collecting through the Federal Reserve Bank when that was the cheapest method of collecting. The quickest method is the cheapest, everything else being equal. I think about ninety-five per cent of the checks upon our bank were collected through the Federal Reserve Bank after we were put on the par list. I never got down and made an exact analysis. Practically every check we had came through the Federal Reserve except a few through the Amerrican Trust Company. The checks received from the American Trust Company were cleared because of the reciprocal arrangement we had. If the Federal Reserve Bank was collecting 95 per cent of our checks for nothing, of course nothing could have been any cheaper than that. It depends upon the location and the amount of trouble as to whether it would be more trouble to pay our exchange than to submit to the loss of time by sending through the Federal Reserve System. There was more reason than cheapness as to why our checks went through the Federal Reserve Bank after we were placed on the par list. The reason was that a number of reserve accounts

were closed out and all the checks were sent through one channel. The closing out of these accounts relieved the member banks of the necessity of carrying large reserves. For instance, the banks in Richmond in handling their checks prior to the time they had the Richmond Clearing Association formed there they all cleared checks on the North Carolina banks and so they would have to have a collection account with each one of these banks to send a check; and after we cleared through the Federal Reserve Bank, they shifted from their shoulders to the Federal Reserve Bank. They thereby collected every check at a cheaper rate and with greater convenience and without the deduction of exchange; but this all accrued to the benefit of the members of the Federal Reserve. But it was equally as great a disadvantage to the State banks, for the Federal Reserve Bank clubbed them into performing this service for nothing. I presume that through the agency of our member bank correspondents, checks which come into their hands can be collected at par on every member bank in this country, but you can't collect anything through the Federal Reserve Bank without maintaining a balance with them. On the contrary, they won't collect our checks for us even after they have forced us to remit to them for nothing.

Our bank cannot collect at par through any bank strictly speaking. We are maintaining with the American Trust Company our balances on about the same basis now that they were prior to par clearance. A considerable portion of the checks which we give are drawn on banks in South Carolina, and they are on the same basis that they have been for the last forty, fifty or sixty years, and are not being handled through the Federal Reserve Bank. We do not suffer from the sloth with which the Federal Reserve Bank has prosecuted its system, but from the rapidity with which we were forced into it. The trouble is that the Federal Reserve Bank knocks us out of from $2,500 to $3,000 per year exchange for a service performed. We would prefer their paying exchange on checks

drawn on us rather than clear checks at par for our correspondents.

The return of checks with the stamp on them which was introduced in connection with Mr. Page's testimony would greatly damage the standing of our bank. I have read that stamp. I don't remember now whether it is a true statement or not. I think so. Mr. Wheelwright did not present any checks on our bank. When he threatened to present them I would have been willing to pay him the total face of the amount of the checks which he held by means of our New York draft. I could not have done otherwise. I could not have refused. I think that I had the right to refuse money. I would not have been willing to have put that same draft in an envelope and sent it to the Federal Reserve Bank of Richmond if they had sent their checks through the mail. I would have taken out one-eighth of one per cent. It would have been more trouble to send it through the mail than to deliver it to Mr. Wheelwright at the counter. We would have had to make some additional records. That would not have been any very great trouble. I would have been willing to take a good deal more trouble than that for Mr. Wheelwright in a personal way. But we did not like the idea of the Federal Reserve Bank treating us like an old hound dog and kicking us around, and we proposed to the Federal Reserve Bank that if we had to fight, we would fight, and it was a matter of expense for us to make remittance through the mail. The only difference in the expense of collecting cash at the counter and collecting an exchange draft at the counter is the difference in the expense of shipping the money. That charge depends on where you ship the Money. If you send it from here to Richmond, I think it would be approximately a dollar or a dollar and five cents."

RE-DIRECT EXAMINATION.

"After North Carolina was made an all par state, we did not get our checks collected for us any cheaper than we had been having them collected. Our account ran along on the

same basis. If the Federal Reserve Bank clears for non-member banks, they require such non-member banks to keep balances with them and that the balances shall be equal at all times to the checks outstanding. They required us to do that before they would clear our checks. They were asking us to clear checks for them at par and were refusing to clear for us at all. The statement in the stamp 'Notify all prior parties of the dishonor of this check' is not a true statement. After we had offered exchange for the check in accordance with law, it was not dishonored. Our bank would be injured by the check being returned with stamp on it."

DEFENDANT'S TESTIMONY.

CHAS. A. PEPLE, being duly sworn, testified:

DIRECT EXAMINATION.

"I am fifty-four years of age and am Deputy Governor of the Federal Reserve Bank of Richmond. I have been in the services of the Federal Reserve Bank for about six years. I have been engaged in the banking business about thirty-seven years." (It is admitted that the witness is an expert banker.)

The Federal Reserve Bank of Richmond, which is one of the 12 Federal Reserve Banks organized under the Federal Reserve Act, is composed, first of all the National Banks in the Fifth Federal Reserve District, and the Fifth District comprises the State of Maryland, the District of Columbia, nearly all of West Virginia, Virginia, North Carolina and South Carolina, and in addition to the national banks which have been required by law to become members of the Federal Reserve Bank of Richmond, a certain number of state banks which have applied for membership and qualified under the provisions of the Federal Reserve Act and the regulations of the Federal Reserve Board. Every member bank is required to subscribe to the capital stock of the Federal Reserve Bank in an amount in proprotion to its own capital and surplus. It can purchase no more and no less than the speci-

fied amount, six per cent of its capital and surplus. Up to the present time one half of these subscriptions has been called in by the Federal Reserve Board as the act requires that it be called in, and the Board has the power to call in the balance at its discretion. No such call has been made. In addition to subscribing to the capital stock of the Federal Reserve Bank, each member bank is required to make in the Federal Reserve Bank and maintain, deposits in collected funds in proportion to its own deposits. Under the law as it exists at this time, a member bank in a certain reserve city is required to deposit thirteen per cent of its demand and three per cent of its time deposits; if in a reserve city ten per cent of its demand deposits and three per cent of its time deposits. In the case of all those classed by the law as 'Country Banks,' the reserve requirement is seven per cent of demand deposits and three per cent of time deposits.

The Federal Reserve Bank is required under the present law to accept at par for credit at par upon collection all checks drawn upon member banks, either in its own district or any other district, and it is authorized by law to accept checks drawn upon non-member banks in its own district and other districts. The checks drawn upon member banks pass through the Transit Department of the Federal Reserve Bank, and are routed direct to the member banks upon which they are drawn. They are not charged immediately to the reserve accounts of the member banks, but after the lapse of a certain time, regulated by railroad schedules and averaged according to the average time of collection in the state, for instance, in the State of Maryland letters to member banks are charged up two days after the letter is sent; and Virginia two days, West Virginia three days after dispatch, so that whatever volume of checks will come in to the Federal Reserve Bank of Richmond from its member banks, and from member banks in other districts through the Federal Reserve Bank of those districts, is sent to the member banks and at the expiration of the schedule time,

is charged to the accounts of the member banks.

I might add that there are no stockholders of the Federal Reserve Bank except the member banks and there are no depositors in the Federal Reserve Bank except the member banks and the Government of the United States; and in some instances, though not in this district, non-member banks under the provisions of the law authorizing it, have clearing accounts which they maintain solely for the purpose of clearing checks through the Federal Reserve Bank. We have never opened any clearing accounts with non-member banks, in this district, though we have the right to do it, and would do it if the non-member bank requested us to do so.

Member banks are required to maintain these reserves in realized balances in the Federal Reserve Bank, and as I have stated, when our letters are dispatched to the member banks, and when the time has expired in accordance with the time schedule, these letters are charged up to the reserve accounts of the member banks, and the member banks are naturally required to send us funds in some form or other to restore their balances.

The deposits in member banks are made by their customers in the form of currency, in the form of checks on a member bank and in the form of checks on other banks, member banks or non-member banks in their own cities or in other cities and towns. Under the existing practice, a member bank can send to the Federal Reserve Bank practically all currency except national bank notes, and they can send, and under the provisions of the law, we are obliged to accept checks drawn upon all other member banks, and under the terms of the law and the regulations of the Board they can send to us all checks drawn upon non-member banks that can be collected by the Federal Reserve Bank at par.

I consider it necessary for a Federal Reserve Bank to collect checks upon all non-member banks for its member banks if it is to render them best facilities for maintaining their reserves.

As I have stated, Federal Reserve Banks are required to accept for collection checks drawn upon all member banks. They are allowed, under our conception of the law, to accept checks drawn upon non-member banks. It is a fact, that, particularly in certain sections of the country where the non-member banks are more numerous than the member banks, the member bank receives from its depositors an assortment of checks consisting partly of checks drawn upon member banks and partly of checks drawn upon non-member banks; in like manner the non-member banks receive from their depositors checks drawn upon members and upon non-members. The checks drawn upon member banks, which are deposited in non-member banks, are in turn deposited by the non-member banks in member banks, with which they carry their reserves, and are by these member banks collected through the Federal Reserve Bank. Of course the checks drawn upon member banks, which are deposited with member banks, are sent direct to the Federal Reserve Bank. So, under that system, it is possible for all checks drawn upon member banks to be presented by its member banks through the channels of the Federal Reserve system; and this gives the privilege of collecting checks upon member banks through the Federal Reserve Banks to non-member banks. Member banks situated in the districts in which there are member and non-member banks in about equal banking power are at a serious disadvantage in that they are required to meet all checks drawn upon them through the Federal Reserve Bank; and are without the power of collecting all checks deposited with them through the same channel. Of course the collection of checks by the Federal Reserve Bank results in the accumulation of a balance to the credit of the banks for which they are collected.

When the present collection system was inaugurated in July, 1916, it embraced all member banks in the United States at that time, numbering a little more than 75,000, and at the same time embraced a slightly smaller number

of state banks that had agreed to remit at par from the beginning of the system. In each district the Federal Reserve Bank conducted a campaign of education and persuasion for the purpose of inducing more and more non-member banks to join the collection system by agreeing to remit at par. From time to time, generally at periods of thirty days apart, a bulletin was issued containing the names of the non-member banks that had joined the collection system, and agreed to remit at par, and this bulletin was sent to all member banks for the purpose of advising them of the banks upon whom checks could be collected through the Federal Reserve system. Of course it was well known to anyone acquainted with the principles of the system that checks on all national banks could be collected by the Federal Reserve Bank or through the Federal Reserve Bank, because all national banks were of necessity members of the system. In addition to the national bank members, there were a number of state banks that had joined. The business people in the immediate vicinity of these state banks would of course know that they were a member of the Federal Reserve system, but those who were out of the district would not know it and the state member banks were included in the par list for the general information of the banks doing business with member banks for the purpose of keeping them advised as to what checks they could collect through the Federal Reserve system and which of them were to be collected through other channels. In the beginning the custom was to publish in the par list in each state the name of the state bank members, and the state non-member banks, whose checks could be collected. As time went on and as the states became all par, instead of a list of all the state banks who were remitting at par, the name of that state was given and under the name of the state was "All banks and banking institutions" —for instance after the State of Massachusetts was on the par list, any check on any bank in the State of Massachusetts could be deposited in a Federal Reserve Bank and sent out

through the proper channels for collection. That list has been published monthly, quarterly the regular list, and monthly a bulletin issued showing corrections and changes since the last quarterly list was published; it is printed in Washington, made up from data sent to the Federal Reserve Board at regular periods by all Federal Reserve Banks.

The present system of par collection through Federal Reserve Banks was inaugurated on the 15th day of July, 1916.

The defendant introduced in evidence as its Exhibit 1, all of the Collection Circular, Number 45, down to 'Operating Details.' This circular is marked as plaintiff's Exhibit F.

The Federal Reserve Banks were organized in the latter part of 1914, and for some little time, while the Federal Reserve Banks were perfecting their organization, there was no such thing as a general clearing plan. In the first place, no efficient method had been devised of making prompt settlement between Federal Reserve Banks, and each Federal Reserve Bank in the process of organization had to build up its own force and erect its machine. However, in 1915, an intradistrict clearing plan was adopted in the Fifth District, and I am very sure in a number of other districts, and I am inclined to think the best part of the plan was with some modifications adopted in each of the Federal Reserve Districts. In one or two of the districts out west there were considerable modifications, with the details of which I am not familiar. Under the clearing plan adopted in 1915, only the member banks inside of the district were allowed to participate and the plan was wholly voluntary abong member banks. That is to say, any member bank could join the clearing plan or not, as it saw fit. After a number of banks had joined the clearing plan we began to receive checks from any member of the plan. Those checks were received at the time for immediate credit and immediately charged, that is to say, all of the banks that cleared in the plan forwarded the checks on each other to the Federal Reserve Bank as a clearing house and checks were swapped and these were charged to the accounts of the banks, and credited

to the accounts of the banks, on the general plan of the large city clearing houses. The plan was a tentative one and was never very successful. My recollection is that in the Fifth District of approximately five hundred member banks only about ninety, certainly less than a hundred, joined the plan. There was no provision in the plan, as I recollect it, for the interchange between Federal Reserve Districts of balances for any member bank which, by reason of these clearings, had built up a balance and wished to transfer that balance to another Federal Reserve District. It drew its draft through the other Federal Reserve Bank or it requested us to make a transfer for them. That whole plan was abandoned of course when the present plan of July 15th, 1916, was inaugurated.

Under the act as originally passed the reserve requirements were materially different from those in force at present. My recollection is that banks in certain reserve cities were required to carry eighteen per cent of demand deposits and five per cent of time deposits. Those not in reserve cities fifteen per cent against demand and five per cent against time, and the country banks were required to carry twelve per cent against demand and five against time. Those reserved from the beginning consisting partly of lawful money in the vault of the bank, partly of deposits with the Federal Reserve Banks, and partly balances with the approved reserve agents. Under the plan which was fully set forth in the Federal Reserve Act as originally passed there was to be a gradual transfer of reserves from reserve agents to the Federal Reserve Banks. The maximum reserves required in Federal Reserve Banks was to be built up by a number of installments extending over a period of three years. At the end of three years, generally speaking, not to be absolutely exact, the reserves required of all banks would consist one-third of reserve balances in Federal Reserve Banks, one-third of lawful money in their own vault and the other third could consist either of lawful money or a reserve balance at the option of the member bank.

On September 7th, 1916, Section 13 of the Federal Reserve Act was amended. Prior to that time permission was given to Federal Reserve Banks to take checks only on solvent member banks. Under the amendment of Section 13 Federal Reserve Banks were authorized to accept checks upon non-member banks. On June 21st, 1917, Section 19 of the Federal Reserve Act was passed. It will be remembered that the Federal Reserve Banks were organized in the latter part of 1914. The reserve requirements were to be perfected—the exchange was to be perfected in two years—which would have made it November 1917, but in June 21, 1917, Section 19 of the Act was amended and the reserve requirements were changed from the old requirements of eighteen, fifteen and twelve per cent on demand deposits and five per cent on time to one-third in the Federal Reserve Banks, one-third in the vault, cash, and the other third at the option of the member bank. Member banks in certain reserve cities were required under the amended act to keep thirteen per cent balances in Federal Reserve Banks, those with reserve state banks ten per cent, and those in country banks required to keep seven. All three classes required to keep three per cent against time deposits, and no cash reserve in their own vault was required, that is to say, banks were allowed to keep whatever cash reserve they saw fit and whatever might be necessary under conditions existing. Moreover, cash reserves under the old National Bank Act and cash reserves under the Federal Reserve Act prior to this amendment had to be lawful money, and any banker knows that prior to the passage of the Federal Reserve Act, and up to the passage of this amended act, currency could not be counted as reserves by banks, however much they might have on hand for their own use. On the same date, June 21st, if I remember correctly, the Hardwicke amendment was passed to the Federal Reserve Act.

From the time that the present collection or clearing plan was inaugurated we have been trying to conduct a campaign of education and inducement all over the district for the

purpose of persuading non-member banks to remit at par. This was done partly by traveling representatives, partly by interviews at the bank by visiting bankers, partly by correspondence and circular letters. By the latter part of 1919 practically all the banks in the State of Maryland—all the non-member banks in the State of Maryland—had agreed to remit at par. On September 10th, 1919, Maryland was placed on the par list as a whole state and from that date we began to collect checks on all banks in Maryland. The District of Columbia doesn't cover a very large area and we had been collecting checks on all non-member banks in the District for a considerable time prior to 1919—I can't give the exact date. On February 1st, 1920, we placed the State of West Virginia on the par list—West Virginia had been divided between the Richmond office and the Baltimore branch—practically half and half. Representatives from the Baltimore branch and the Richmond branch conducted that campaign. On the 1st day of April, 1920, Virginia was placed on the par list as a whole state, and on November 15th, 1920, we did the same thing for North Carolina. Prior to November 15th, 1920—sometime prior—we had representatives traveling the whole State, explaining the situation to non-member banks, pursuading them wherever it was possible to agree to remit at par, not immediately, but as soon as we were in a position to collect checks on the entire State. At that time there were four hundred and seventy-eight banks; I am not sure whether we figured separate banks, or branches as banks; four hundred and seventy-eight, which had not previously been remitting at par, we put on the par list; and in a number of those cases the banks were unwilling to go on the par list, and in 24 cases during the first ten days it was necessary for us to present checks at the counters of the non-member banks and demand payment in currency.

In requesting non-member banks to remit to us at par we gave them the option of remitting by means of check on Richmond, Baltimore, Philadelphia or New York, or in sending us currency in the form of currency at our expense, pro-

vided of course, they would pack the currency properly under our direction, taking the proper precautions and so enable us to insure the safe delivery of the currency to us. In addition to that we provided a special device in those districts. We knew that a great many of the non-member banks had been maintaining satisfactory relations with the member banks in a number of exchange centers throughout the district which were not reserve centers and exchange on which could not be collected by us in one day, and we felt that the demand for Richmond, Baltimore, Philadelphia or New York exchange would compel these banks to move their accounts from the bank in which they had been keeping them to one in those cities which were designated as reserve cities. So, we with the cooperation of the Federal Reserve Board devised what is known as the immediate credit symbol plan. We would make a contract with any member bank whose standing justified such a contract, allowing that bank to grant to its depositors the right to use the symbol stamped on the check. We required the bank to make a sub-contract with each one of those customers to whom we granted the use of the symbol, and one of the provisions of the sub-contract was that the customer must keep with the member bank a balance satisfactory to the member bank to justify the services to be rendered. Then a customer in drawing a check upon that member could stamp it with the immediate credit symbol and when that IC symbol check came into our hands we had the privilege, under our contract with the member bank, to charge it immediately to the member bank's account, without waiting for the expiration of the two or three days. A member bank upon receipt of this check would charge it to the account of its customer, the non-member bank. In that way it made that check available in Richmond for immediate credit by reason of the fact that the drawee bank kept a sufficient balance with us to enable us to charge this item immediately against its account upon the day of receipt. By the use of these checks a non-member bank could transfer funds from one correspondent just as though it had

an account in Richmond. In other words, by this plan, to all intents and purposes, as far as the selected list of customers was concerned, the member bank not situated in Richmond could grant the exchange privilege to the non-member bank or other customer just as though it were situated there. Of course it required the member banks to keep with us a balance sufficiently in excess of its reserve balance for us to charge the immediate credit symbol check against it. That was the object in view in devising the IC symbol checks—to disturb existing banking relations as little as possible. Not to require the non-member banks to open a new account; or to transfer the bulk of business from its member bank correspondent in the district, to Richmond, Baltimore, Philadelphia or Washington, and it was to devise a method of collecting exchange, which, under conditions existing in the district did not exist before we put this system into effect.

There were a great many reports circulated to the effect that placing North Carolina on the par list had caused the transfer of large sums of money from North Carolina to Richmond—from banks in North Carolina to banks in Richmond. Those sums were estimated at five or ten millions, and I think in some cases fifteen millions. We were of course very much interested. We made a special investigation—sent out a request to all Richmond banks to give us information as to balances to the credit of North Carolina banks on certain dates and we combined this information received on balances and issued a circular letter on the subject.

The defendant introduces 'Copy of Letter to the Editor of the Southern Banker for the Information of Member Banks and Others Concerned,' dated May 25, 1921, which is marked as defendant's Exhibit 2, and introduces other letters marked defendant's Exhibits 3, 4, 5 and 6. The letter marked Defendant 3 was sent to approximately 109 banks—non-member banks—in North Carolina, which had not signed and did not promise to remit at par. Exhibit marked Defendant 4 was sent to about 38 branches, parent banks of which had signed an agreement to remit at par. The

letter marked Defendant 5 was sent to 213 banks which had said to our representative that they would remit at par but did not sign the agreement, and the letter marked Defendant 6 was sent to approximately 133 banks which had signed the agreement to remit at par on and after November 15th.

The defendant offers in evidence Defendant's Exhibits 2, 3, 4, 5 and 6 as follows:

FEDERAL RESERVE BANK OF RICHMOND

DEFENDANT'S EXHIBIT No. 2.

Copy of letter to the editor of the Southern Banker for the information of member banks and others concerned.

May 25, 1921.

Editor of the
Southern Banker,
Atlanta, Ga.

Dear Sir:

In your Extra Convention Edition for May, you print an article by L. R. Adams, Secretary of the Bankers Trust Company of Atlanta and of the National and State Bankers Protective Association, under the heading, "Universal Par Clearance." You comment editorially upon this article in the following language: "No man in the South probably knows more about the subject of par clearance than the author of the accompanying address." . . . .

In the address of Mr. Adams, he made the following statement:

"I am told that within a week after the Richmond Federal Reserve Bank put North Carolina on the par list, which was some sixty or ninety days before the passage of the law, fifteen million dollars of the country banks money in the reserve centers of North Carolina

moved to Richmond, and North Carolina City Banks lost their deposits."

In your report of the Louisiana Convention elsewhere, you print an article by F. R. Jones, of Atlanta, Assistant Secretary of the National and State Bankers Protective Association, under the heading, "Progress of Par Collections." In his address Mr. Jones used the following language:

"I want to say, however, that it was discovered that within ten days after the Par order went into effect on November 15, North Carolina clearing banks lost in deposits to Richmond banks more than ten million dollars, removed because the North Carolina banks could not remit in exchange on North Carolina banks and therefore had to keep their reserve in Richmond."

There is a trifling difference of five million dollars between the Secretary and Assistant Secretary of the National and State Bankers Protective Association, and there is a far wider difference than that between the statements of both of these gentlemen and the facts.

I will concern myself only with the correction of this one statement of facts, since misinformation becomes by repetition, in effect, misrepresentation. In one case the Secretary states, "I am told"; in the other case the Assistant Secretary states, "I want to say, however, that it was discovered." By whom?

The so-called Par Clearance Plan was put into effect in the State of North Carolina on November 15, 1920, and remained in operation with all the banks of North Carolina until February 5, 1921, about which date certain banks obtained in their State court an injunction against the Federal Reserve Bank of Richmond, restraining it from returning protested, checks presented to the said banks by representatives of the Reserve Bank for payment in cash upon refusal to pay cash, as permitted by the law against par clearance which went into effect in North Carolina at that time. Thereafter the Federal

Reserve Bank of Richmond declined to handle checks on the banks which became parties to that injunction.

I give you below a statement of the aggregate deposits of the State banks of North Carolina in Richmond banks prior to putting the Par Clearance Plan in operation, fifteen days after the plan went into operation, and on February 1, a few days prior to the date on which the anti-par-clearance law was passed.

DEPOSITS IN RICHMOND BANKS FROM NORTH CAROLINA BANKS

Memorandum of Amount on Deposit by State Banks of North Carolina

Nov. 1, 1920	Nov. 15, 1920	Dec. 1, 1920	Feb. 1, 1921
$4,858,649	$5,073,314	$4,916,710	$4,819,478

Memorandum of Amount on Deposit by all Banks of North Carolina

$9,106,089	$9,538,553	$9,177,763	$7,929,606

It is reasonable to suppose that only the deposits of the North Carolina non-member State banks in Richmond banks would have been affected, since they were the banks primarily concerned. But in order to completely refute these irresponsible statements, I have given not only the deposits of the non-member State banks but the deposits of all banks of North Carolina in Richmond banks, and have selected a reasonable date prior to the inauguration of the par plan, since it is conceivable that some banks might have made preparations in advance. It is to be noted that there was an actual decline in the deposits of the North Carolina bank in Richmond after the plan went into effect.

It is somewhat pertinent, and in any event a matter of public interest to know that on November 15, the day on which the Par Clearance Plan went into operation in North Carolina, members of the Federal Reserve

Bank of Richmond were lending to non-member banks in North Carolina $8,892,000. That is to say the Federal Reserve Bank of Richmond was furnishing funds in that amount for the benefit of the non-member banks in North Carolina, the money being borrowed from the Reserve Bank.

Yours very truly

(Signed) GEO. J. SEAY,

Governor.

GJS—CCP

Copy.

Sent to about 109 banks which refused to sign agreement and which did not agree to remit at par.

DEFENDANT'S EXHIBIT No. 3.

November 6, 1920.

Bank of Wilkes,

Wilkesboro, N. C.

Gentlemen:

Referring to the subject of par remittance for checks upon yourselves, which our representative recently discussed with you in more detail and in a more satisfactory way than was practicable to do by letter, we now deem it both proper and desirable to lay the present situation before you.

Ninety-three per cent (28,126 banks, holding ninety-eight and six-tenths per cent of the banking resources) of all banks in the United States now remit at par, leaving approximately seven per cent (2,160 banks, holding one and four-tenths per cent of the banking resources) of all banks in the United States not on the par list. Under these conditions, we deem it only fair and just to the 28,126 banks which this small minority (2,160 banks) can collect at par, either directly or indirectly, to make arrangements to enable all the other banks to likewise collect at par upon the said minority banks.

The Federal Reserve Board believes it is charged with the duty and responsibility of inaugurating a complete check clearing system throughout the United States, and that the Federal Reserve Banks, in compliance with the evident purpose of the law and in fairness to all their member banks, must exercise their power to receive for collection from member banks checks upon whomsoever drawn which which are payable upon presentation. It is the opinion of the Attorney General of the United States that the Federal Reserve Banks are not authorized by law to pay any charges to banks for remitting checks drawn upon them and sent for collection by Federal Reserve Banks.

It is, therefore, the purpose of every Federal Reserve Bank to take steps to put its entire district upon the par list, and the benefits to the banking and commercial business of the state and country are so manifest that we trust you will cheerfully and at once join in effecting this country-wide purpose.

All banks in the District of Columbia and the states of Maryland, Virginia and West Virginia are on the par list, and we have decided to undertake the par collection of checks drawn on all North Carolina banks on and after November 15, 1920.

For checks drawn on yourselves sent to us, you may ship us currency at our expense to cover your checks at par. However, rather than inflict hardship upon you by insisting upon cash for checks drawn on your bank, we are entirely willing to accept at par your drafts drawn on Richmond, Baltimore, Philadelphia or New York, or drafts on your member bank correspondent bearing the "[illegible] C." symbol of this district, provided such remittances are made promptly upon the day of receipt of our letters to you, which will contain only checks drawn upon your bank. We will enclose a self-addressed, stamped envelope with each of our letters to you.

It is our sincere hope that you will join the rest of the

North Carolina banks in accounting at par for checks upon themselves, and not compel us to take the step of providing for personal presentation at your counter.

A prompt reply to this letter will be greatly appreciated.

Very truly yours,

Deputy Governor.

CAP—W

Copy.

Sent to about 38 branches of banks which had signed agreement.

DEFENDANT'S EXHIBIT No. 4.

November 6, 1920.

Cabarrus Savings Bank,

Albemarle, N. C.

Gentlemen:

A representative of this bank recently called on your parent bank at Concord, North Carolina, and discussed with one of the officers of the parent bank the subject of par collection of checks, and received from them a letter authorizing us to place on our published par list the name of the parent bank and its branches, effective when we notified them that we were prepared to collect checks at par on all North Carolina banks.

On and after November 15, 1920, we will collect checks on all banks in North Carolina at par. The agreement of the parent bank, affecting also the branch banks, becomes effective on that date.

In order that you may have in your files a copy of the agreement referred to above, I am enclosing one herewith, together with a circular giving directions for shipping currency in payment of checks sent in our cash

letters for remittance at par, transportation charges and insurance to be paid by us.

Yours very truly,

Deputy Governor.

CAP-F

Copy.

Sent to about 213 banks which did not sign the agreement but which said they would remit at par when we were in position to collect checks on all other banks in North Carolina.

DEFENDANT'S EXHIBIT No. 5.

November 6, 1920.

Planters' Bank,
Battleboro, N. C.

Gentlemen:

A representative of this bank recently called on you for the purpose of explaining carefully the plan for par collection of checks. He advises us that you gave him the assurance that when we undertook to collect checks on all North Carolina banks at par, you would remit us at par for checks on yourselves.

On and after November 15th we will collect checks on all banks in North Carolina at par. In order that our files may be complete, please sign the enclosed agreement and return to us in the enclosed stamped, addressed envelope.

We appreciate very much the courtesies extended our representative and your cooperation in this important work.

Yours very truly,

Deputy Governor.

CAP-S

Copy.

Sent to about 133 banks which had signed agreement.

DEFENDANT'S EXHIBIT No. 6.

November 6, 192

Home Savings Bank,
Wilmington, N. C.

Gentlemen:

When our representative called on you r
cently for the purpose of discussing the question of pa
collection of checks, you gave us a letter authorizing u
to place the name of your bank on our published par lis
effective only when we notified you that we were prepare
to collect checks on all banks in North Carolina at pa

On and after November 15th we will collect chec
on all North Carolina banks at par. Your agreemen
therefore, becomes effective on that date.

We appreciate very much your cooperation in this wor

Yours very truly,

Deputy Governor.

CAP-H

Copy.

Those letters were written after our traveling represe
tatives had covered the entire State of North Carolina. M
recollection is that there were not more than one or two ban
in remote places that were not personally visited, and t
object of those letters was to advise all of the non-memb
banks in the State that on November 15th we would beg
to receive checks on all non-member banks in the State
North Carolina and forward them to them for remittance
par.

To the best of my recollection on November 15th we fo
warded to all non-member banks in North Carolina chec
drawn on them. Those cases in which we did not have po
tive reason to believe that they would remit at par we se
them on with a letter.

The following is defendant's exhibit 7.

Copy.

Sent with first cash letter.

DEFENDANT'S EXHIBIT No. 7.

November 15, 1920.

Bank of Wilkes,
Wilkesboro, N. C.

Gentlemen:

Under date of November 6th you were advised that on and after November 15, 1920, we would undertake par collection of checks drawn on all North Carolina banks. With the advice we enclosed a form of agreement, which we requested you to sign and return to us, but as yet we have not received the signed agreement.

Thinking that you may possibly have over looked the matter, we are enclosing herewith a letter containing checks drawn on yourselves, for which we expect par remittance by draft, or you may ship us currency at our expense to cover these items.

Shipment of currency in payment of checks on yourselves enclosed in our letter to you should be made strictly in accordance with the directions in the attached circular.

As previously explained to you, we are not permitted by law to pay banks exchange or collection charges for remitting for checks on themselves. We hope you will make prompt remittance at par for the enclosed checks, but if you will not do this, please RETURN THE LETTER AND CHECKS BY FIRST MAIL. DO NOT UNDER ANY CIRCUMSTANCES HOLD CHECKS UNPAID OR DEDUCT EXCHANGE.

We will greatly appreciate it if you will TELEGRAPH

US COLLECT whether you are remitting at par or returning checks unpaid.

Very truly yours,
Deputy Governor.

CAP-W
Copy.

On November 15th we enclosed with all the letters addressed to banks that had not positively agreed to remit at par, or that we thought would not agree to remit at par, the letters enclosing the checks which we had received on them, asking them to reconsider the matter and directing them to return the letters with the checks by the first mail unless they were willing to remit in satisfactory exchange at par without the deduction of exchange. We also asked them in that letter to telegraph us immediately whether or not, or rather to telegraph us, if they were not willing to remit at par and under no circumstances to retain the checks unless they were willing to remit at par. There were two others dated November 16th and November 17th, which were used as 'follow-ups' of this special letter of November 15th.

The Federal Reserve Bank of Richmond never presented any checks for payment in money until it had found it impossible to collect at par through the mails or until it found it unsafe to accept an exchange draft from the drawee bank.

Very frequently, checks which were sent to us by non-member banks in North Carolina, upon their reserve correspondents, were not paid upon presentation. I think it is only fair to say that the same is true in other states.

In a great many cases, owing to the standing of the non-member bank offering the exchange, there is no serious question as to whether the exchange draft is good. In a good many other cases the question does arise and we have endeavored to meet that situation where it is possible to meet it by having the agent to call up the bank, on which it is drawn, over the long distance telephone and ascertain whether the check is good or not before taking it. That is, of course

in those cases in which the agent is authorized to take the check.

Even if a check is good when drawn, there is no way to assure yourself that it will be good when presented unless the drawee bank will agree over the telephone to hold the funds for that check.

I have an analysis of the checks drawn upon all banks in North Carolina by months of the calendar year 1921, and at the head of each column is the number of banks in the classes covered by the column. There are between 246 and 265, the number has varied throughout the year. I should say approximately 250 banks—non-member banks remitting at par in North Carolina now.

There are a few of the banks that are parties to this suit—I think fifteen or twenty—which have requested us to handle checks drawn on them since this suit was brought.

There are eighty-seven national bank members and during the year the number of state bank members varied from ten to sixteen. Sixteen state bank members making a total of 103 member banks.

The total amount of checks drawn on North Carolina banks and handled by the Federal Reserve Bank of Richmond during the year was $1,099,470,662.57, divided as follows: On the 87 national banks the total of checks was $531,189,-767.31; on the state member banks, which varied from 10 to 16, the total was $286,997,951.31; on the non-member par banks which varied from between 246 and 265 the total was $244,972,615.64; the total checks on the non-member banks that are now on the injunction list, which list, of course, excludes the injunction banks remitting at par, handled by us during the year was $36,310,328.31. The checks collected on those banks varied greatly throughout the year, but we have one complete month—January. February is considerably less than January and March is considerably less than February, but it would be remembered that the injunction suit started soon after the 5th day of February with a comparatively small number and numbers joined from time to

time, so that the injunction was not in operation through the entire year with reference to all the banks.

However, after the injunction proceedings we have handled a great many government checks payable to collectors of internal revenue and possibly some to the State of North Carolina or other departments of the government, which are exempt under the State law. We wanted to complete this table by calculating as exactly as possible how much the volume on the non-member injunction list banks would have been if we had continued to send them checks and we put it in this way. We found that of the national banks the amount sent in in January was 8.83 per cent of the total sent for the year. Of the state bank members the amount sent in January was 8.19 per cent of the total for the year; and the non member par banks the amount sent in January was 9.87 per cent of the total for the year. We, therefore, assumed that the amount sent to the non-member injunction banks during the month of January was in the neighborhood of nine per cent of what would have been sent for the year, if the process had been uninterrupted. We found that that total, based on what was sent, would have been 154, 501, 924, deducting the $36,310,328.00, which we did received, and of course, the total would be $118, 191, 596.00, making the total estimate of checks drawn on banks in North Carolina, which would have been collected through the Federal Reserve Bank of Richmond, had the process been continued, $1,217,662,258.00. The 87 national banks had drawn on them 43.63 of that total, the state member banks, varying from ten to sixteen, in number, had 23.56 per cent of the total, non member par banks approximating 250 in number, running from 246 to 256, had 20.12 per cent, and the 250 banks on the injunction list had 12.69 per cent of the total.

Exhibit marked Defendant 9 was introduced as evidence by the defendant, which is as follows:

STATEMENTS OF CASH ITEMS FORWARDED TO BANKS IN STATE OF NORTH CAROLINA DURING YEAR 1921

Month	National Banks (87)	State Member Banks (10 to 16)	Non Members on Injunction List (251)	Non Member Par Banks (246 to 265)	Totals
January	$ 46,934,598.21	$ 23,529,911.69	$13,805,173.21	$ 24,189,928.99	$ 108,459,612.10
February	37,734,240.34	20,536,185.05	8,642,626.31	20,125,500.23	87,038,552.43
March	42,364,894.16	22,213,001.07	2,469,783.93	18,144,007.26	85,191,686.42
April	39,156,024.14	21,087,212.50	1,978,056.27	16,065,043.58	78,286,336.49
May	39,561,655.48	20,027,674.54	1,820,337.11	15,793,172.02	77,202,839.15
June	40,777,350.99	22,305,923.75	1,578,404.92	16,900,617.02	81,562,296.68
July	37,043,938.63	21,405,363.25	1,006,353.60	15,533,878.12	74,989,533.60
August	38,083,941.93	22,982,046.87	861,944.96	15,976,259.54	77,904,193.30
September	45,144,858.73	26,978,754.73	1,193,134.19	20,894,663.60	94,211,411.30
October	57,254,134.44	31,214,043.57	1,290,517.52	26,959,473.90	116,718,169.43
November	53,109,756.34	27,571,812.07	970,710.90	27,655,734.18	109,308,013.49
December	54,024,373.42	27,146,022.17	693,285.39	26,734,337.20	108,598,018.18
Totals	$531,189,767.34	$286,997,951.37	$36,310,328.31	$244,972,615.64	$1,099,470,662.57
Estimated amount sent direct after injunction			(add) 118,191,596.00		(add) 118,191,596.00
	531,189,767.00	286,997,951.00	154,501,924.00	244,972,615.00	1,217,662,258.00
Percentage	43.63%	23.56%	12.69%	20.12%	100%

The defendant offered in evidence a page taken from the Federal Reserve Bulletin for January, 1922, giving these figures, and marked Defendant 9a, which is as follows:

DEFENDANT'S EXHIBIT No. 9A.

NUMBER OF MEMBER AND NONMEMBER BANKS IN EACH FEDERAL RESERVE DISTRICT, DEC. 15, 1921 AND 1920.

Federal Reserve district	Member banks		Nonmember banks			
			On par list		Not on par list*	
	1921	1920	1921	1920	1921	1920
Boston	436	436	257	258	-------	-------
New York	800	780	332	328	-------	-------
Philadelphia	704	698	472	439	-------	-------
Cleveland	884	871	1,085	1,080	1	-------
Richmond	625	611	994	1,267	577	334
Atlanta	513	460	394	414	1,156	1,212
Chicago	1,443	1,417	4,234	4,270	-------	-------
St. Louis	586	571	2,488	2,526	167	186
Minneapolis	1,023	1,000	2,662	2,895	154	-------
Kansas City	1,097	1,088	3,172	3,402	185	-------
Dallas	861	848	1,154	1,265	23	-------
San Francisco	855	832	973	1,028	-------	-------
Total	9,827	9,612	18,217	19,172	2,263	1,732

*Incorporated banks other than mutual savings banks.

In answer to questions as to the methods of check collection prior to the Federal Reserve Act witness said:

Information in regard to the process of collecting checks prior to the Civil War is very meager. A great many books have been written on banking during that period, but most of their discussions are taken up with the payment of collection of currency which was held by the various state banks, and it was collected in certain centers, notably in Boston at the Suffolk Bank, which established a system which has become known as the Suffolk system. There is occasional mention of checks in many of the old accounts, but in the earlier books they seemed to be treated as collection items in the same way that drafts are treated. I think the fair

inference is that the process of paying by giving a check was nothing like as prevalent as it is now, and that payments were made mostly in the currency held by the various state banks, and the problem of clearing or the problem of currency clearing—mention is made in some of the early books of the general practice of merchants on making payment in distant places of going to the bank in which they kept their account and purchasing exchange drafts drawn on the bank's correspondent in the city in which the payment was to be made; and it seems to have been the universal custom with these banks, when selling these exchange drafts, to make a fairly good charge for the exchange draft on the ground that they themselves, in order to make the exchange good in the distant city, had to transfer or transport the currency and had to transport local currency, which was subject to a discount at that place, or had to buy locally the currency of that place in order to make a remittance, and had to lose the time of transferring, and had to lose the express charges and insurance charges. The inference is, therefore, that such checks as were drawn on the banks under those circumstances were mainly in their own locality. In 1864 the national banking system was established and after that time, because of the existence of national banks, the practice, of drawing, and giving checks and sending them to a distance, became more and more prevalent, and the practice of buying an exchange draft from the bank came less and less usual. Therefore, when checks drawn on these national banks were sent to various other places and were sent to the bank for collection they had to be remitted for by means of the national bank's draft on its city correspondent. Just as the national banks had been in the habit of charging the merchant an exchange charge when they sold him their draft on the distant city, so they continued the method of deducting an exchange charge when they mailed a draft to pay customer's check sent them for payment by the bank in the

distant city. At the time that I went into the banking business as a boy, it was still usual in making large remittances for the merchant to buy drafts on New York, Boston, Philadelphia or Chicago, but the other practice had already proceeded very far and the custom was often for the customer to send his own check on his bank to the person to whom he owed money in the distant city, and for that person to send out the check through the usual collection channels.

Then, of course, the banks had the problem of collecting checks, first with the least possible expense and with the least possible expenditure of time, and in many cases it was balances between the expenditure of time on the one side and the cost of exchange on the other side. A good many years prior to the time that I went into the banking business clearing houses had been established in practically all of the large cities. That is to say, all the large banks in the large cities would send their local and out-of-town customers' checks to them and checks on other banks in the same place. They would have a meeting then and each one would carry to the meeting an envelope containing the checks drawn on some other bank in the same city, a separate envelope for each bank. They would exchange envelopes and have an accounting, and instead of each bank paying to the other the total volume of checks drawn on them, all the banks would get credit for what they had in the clearing house and charged with what they took out, which resulted in a number of credit and debit balances, and the banks settled by the payment of the differences. Checks that had to be collected at a distant place could not be handled the same way, but the banks in nearly every instance if they had checks to collect on the banks in Richmond they would take them to one Richmond bank, usually one they had an account with, and forward all Richmond checks to that Richmond bank. The Richmond bank in addition to taking its own checks would agree to accept checks on the country banks in its immediate neighborhood and that method was greatly facilitated by the

fact that these banks in the immediate neighborhood used Richmond as an exchange center, keeping their reserve balance in Richmond and drawing checks in settlement of their accounts with each other on Richmond. Many other cities, all over the United States, began to act as exchange centers, just as Winston-Salem, Charlotte, Raleigh, High Point, and a number of other places in North Carolina have become local centers for clearing. The large banks in those centers have built up facilities for clearing all their immediate territory. As the banking system was more and more developed, different avenues for collection were developed. Certain banks would undertake to collect certain territories, for other banks, in exchange for a similar service in their own territory. Some banks, by having the deposits of a number of country banks, had peculiar facilities for collecting on those country banks at a lesser rate than the country banks would charge a bank that sent in a casual letter, and in that way a number of avenues of collection were developed, the general tendency of each was the rendering of service in keeping down the cost of collection in the shape of exchange. Some banks realized many years ago that by making their own checks collectible at par in distant cities they were giving a special service to their customers, and they made arrangements to remit at par.

The general effect of that was seen when the Federal Reserve Bank established their present collection system, because Boston, which was the seat of the Suffolk Bank that had established, prior to the Civil War a system of collection of the bank notes of the banks over the district, was the first Federal Reserve District to induce all of its banks to remit at par.

In various parts of the country other kinds of clearing houses were established, known as country clearing houses, for the purpose of collecting checks as expeditiously as possible and as cheaply as possible. When the Federal Reserve Bank of Richmond established its Baltimore branch, the banks

in Baltimore had formed what was known as the county clearing house, in which most of them participated. A number of the Baltimore banks handled items through the Baltimore country clearing house but only checks drawn upon banks which had agreed to remit at par. The object of the Baltimore clearing house was to consolidate the collections and to write one letter a day to each of the fifty or sixty banks instead of having each large bank in Baltimore write a separate letter every day to each one of these banks.

In other places the country clearing house was organized for the purpose of lessening the cost of exchange by all the large banks in a certain place combining their items and collecting through one channel, and so it was the duty of the banker to make the best possible arrangement he could, either directly or through some other party or by whatever means he could, and he was always on the lookout to discover some channel by which he could collect items on a given city for less than the banks were in the habit of charging. The result was some reduction of the exchange charges; and the general development of the plan prior to the inauguration of the Federal Reserve Bank was in the direction of the elimination of the exchange charged in a considerable number of cases. I have already testified that when our present collection plan was started, approximately 75,000 member banks with almost the same number of non-member banks were immediately put on the par list. That is to say, the system had developed to that extent that 75,000 non-member banks were willing to pay checks drawn on these directly to the Federal Reserve Bank in the district in which they were located and without exchange charges.

The question has been raised very frequently by non-member banks in the course of our campaign of education as to whether they can get any advantage and whether their customers can get any advantage by becoming members of the collection system in the sense of agreeing to remit at par. It is exceedingly difficult, to establish in dollars and

cents that specific advantage. We have had a great deal of correspondence with the clearing houses of the large cities in our district and tried to make them see the necessity of making some concession in their collection charges in proportion to the facilities offered by the Federal Reserve Bank for collection. In other words, if the banks in Richmond, Virginia, have been charging for collection at the time that they had to pay a considerable amount of exchange, it is only fair that these charges should be reduced when a state of affairs is brought about in which they would have considerably less exchange to pay, and the Federal Reserve Banks have been working, during this whole time, not only to enlarge the collection facilities through the Federal Reserve system, but to induce the member banks and the non-member banks in the large cities to grant concessions. It is very difficult to show just what concessions have been granted in most of the exchange cities. For instance in Charleston, which is a reserve city of the Fifth District, while the Charleston banks can collect on the members of the Federal Reserve system at par, and on a few non-member banks at par, there are in the State of South Carolina a very large number of banks on which they can't collect except with exchange charges made by these banks, and consequently, it has been very difficult for us to get any concession out of the Charleston banks.

The situation in Richmond is that there is no clearing house agreement at all by the banks with reference to the charging of exchange. Each member of the Richmond clearing house has the right to charge exchange or not charge exchange. But upon this point there is no clearing house agreement in Richmond with reference to collecting. I don't think there is any clearing house agreement in Washington. All exchange charges there are discontinued. In New York there is and has been for a number of years a very positive clearing house agreement and for a long time the clearing houses in New York practically refused to make any concession, during the progress of the Federal Reserve Bank's

par campaign, notwithstanding the fact that they were getting the results. But on April 10th, 1920, the New York clearing houses issued this circular, or a circular, the general effect of which is this: (I will try to state it as briefly and simply as possible.)

The New York banks, acting through their clearing houses, and as a clearing house, have adopted rules under which they will make no special concession except in those cases in which the whole of a state is on the par list. Wherever the whole of a state is on the par list they will make a charge for giving immediate credit for the items drawn on banks in that state, which is equivalent to interest for the time that it takes to collect the item at a rate of less than six per cent—my recollection is four and a quarter per cent—for the deferred time is the basis of that charge on items of states, all of the banks of which are on the par list of the Federal Reserve Bank. This is the reason which a New York bank has for imposing a charge on checks payable outside the city of New York and nearby centers. When a New York bank receives a check from one of its depositors, which check it can deposit with the Federal Reserve Bank, but on which it can't receive credit in its reserve account for one or more days, and gives the depositor immediate credit for that check, it is lending to the depositor that amount of money for the time—for the number of days between the time it received the check and the time it can change the check into money through the collection facilities of the Federal Reserve Bank and in accordance with the terms of the bank. Where there is no question of exchange in the state the New York bank bases its charge on interest at four and a quarter per cent per annum.

As a senior officer of the Federal Reserve Bank of Richmond, I was in frequent consultation with Mr. Fry, who has immediate charge of that work, and with the field men as they came in from the road, and they had most positive instructions under no circumstances to hold out the checks

of any bank for any longer than it was absolutely necessary in order to make presentation. I also stated if we had more banks than the field men could handle in any one day that they were to be very careful to select and present with the utmost promptness those banks on which they had gotten the largest amount in items so that whatever accumulation there might be, caused by our inability to visit every one of the banks on the same day, it might work the least possible hardship on any bank called upon to pay the checks, and as far as I know these instructions were obeyed.

CROSS-EXAMINATION.

Prior to 1916 the practice of charging exchange was almost universal with North Carolina banks. There were some banks in North Carolina that had reciprocal accounts with Virginia banks, and I think it highly probable that some part of the volume of North Carolina checks was collected by Virginia banks without an exchange charge prior to that time. Prior to July, 1916 an overwhelming majority of State banks in North Carolina charged exchange. They continued to charge exchange up until November 15, 1920. When our men visited the banks quite a number of them agreed that they would remit at par when we could collect on all the rest of the banks at par. Prior to the time that we sent out the 'par pointers' an overwhelming majority of North Carolina State Banks were charging exchange. 478 of them were charging exchange up until November 15, 1920. As a result of the educational activity of the 'par pointers' a number of the State banks signified their willingness to remit at par if the others would do so. I don't think it is a true statement of the case to say that the educational activities of the 'par pointers' were like the educational activities of Germany in the invasion of Belgium.

For some months prior to the inauguration of the par pointer campaign we had our men traveling through North Carolina discussing this matter with the state banks, and by the way, that wasn't the first time the matter had been

brought to their attention—in previous years they had been receiving par point literature from us. These men went through for several months in advance of the date of November 15th. We ourselves had not at that time selected the day on which we would put the State of North Carolina on the par list. We could not fix the date until we had found out the sentiment of the banks—found out whether the educational campaign had gone far enough—found out whether a sufficient number were willing to cooperate with us or not, because if the whole 478 banks had said "no," we couldn't have done anything. We should have been compelled to continue the campaign longer. When we were satisfied that a sufficient number would remit at par— we had asked these upon signing agreements that they would remit at par, not immediately, but when the date was fixed, whenever they were notified that we were prepared to put the State of North Carolina on the par list, and during the close of the campaign, November 15th was fixed as the time that we would be prepared to do that. When we had reduced the number that would not agree to remit at par to a number which we felt that we could handle with the field force, for they knew, of course, that the only course for us to pursue with those who refused to remit at par would be to send a man or representative to the bank with the day's checks and ask payment in money.

In some cases the statement was made that the banks would be put on the par list whether they consented to go or not, but you can readiiy understand that it would have been exceedingly undiplomatic to walk into a bank and put it just that way to the bank on the first visit. Our men had instructions to be perfectly frank and entirely courteous, but not to leave the bank under a misapprehension—not to put us in the position of taking any action at a subsequent time which would take the bank unawares or leave them unprepared. We felt in order for us to do this thing it would be necessary for us to present checks. We felt that law required us to accept checks on member banks and in giving us the permission to accept checks on non-member banks

for the reason I have stated, we have the moral duty to the member banks to collect on the non-member banks when collection can be made.

We told our representatives to be polite, firm and frank. We did not tell them, or give them to understand, to get the banks to come in if they would, but forcibly, if they must. I think a more accurate statement is to say that we instructed our representatives to explain the situation to them, get them to come in if they possibly could, and if they could not, to let them understand that we felt this duty was imposed upon us to establish the ability to collect on non-member banks, and so far as we could see, the only method by which we could do this—the only method by which we could positively establish that—was by the presentation of checks and the demand for currency.

We gave our representatives authority to tell the various banks that if they held out we were going to put them on the par list whether they consented or not, and that unless they agreed to remit at par we would send our representatives with checks and present them over the counter for payment in cash. That was the only course left open to us and we told them we would do it.

As a matter of fact, when the non-par banks refused to remit at par we did send checks out in the hands of collectors for presentation over the counter. In a number of cases we sent the checks drawn on these banks and received by us to the banks by our representatives with instructions to demand payment in currency unless the bank would agree in the future to remit at par, and that if the bank agreed to remit in the future by mail at par to take the exchange check provided he was satisfied that the exchange check was good. We knew at the time that we put the banks on the par list that putting them on the par list would inevitably result in bringing into the hands of the Federal Reserve Bank of Richmond practically all of the checks drawn on these banks that went out of their immediate localities. In many cases the inevitable result would

be bringing into the hands of the Federal Reserve Bank of Richmond practically all the checks drawn on a bank that went out of its immediate locality. In a great many cases, the effect of placing a bank on the par list is the bringing to us for collection the checks drawn upon the non-member bank that have been deposited in member banks in this other and other districts, and our object in putting the non-member bank's name on the par list is to advise our own member banks and the member banks in other districts of the banks whose checks it is possible for us to collect for them without payment of exchange.

I have forgotten the exact number of banks in North Carolina that we put on the par list, who had not agreed to remit at par. I do not think there were as many as two hundred, for I do not think that we would have gone into that stage of the campaign with that many out. My recollection is that there were somewhere in the neighborhood of one hundred banks, but we were not certain whether they would remit or not. A great many of them stated they didn't want to, and we told them that we knew they didn't want to come in. We did not have any checks on them at that time, because we had not put their names on the par list. We got no checks from them until they were put on the par list. Every member of the Federal Reserve system knows we can only handle checks on banks whose names appear on the par list, with this provision, of course, that we don't print the individual names where a whole state is on the par list. The printing of the name of the state, with a statement "all banks and trust companies" is equivalent to having the name of every bank.

Until we got checks drawn on these non-par banks we did not have any duty to perform with regard to their checks, and we didn't get their checks until we put them on the par list, which was notice to the world that we were collecting their checks at par.

It is more expensive in an individual case to send collectors with checks to collect than to pay exchange, but it is

necessarily more expensive to send representatives or
oint agents in the localities of ten or fifteen, twenty or
ty banks than it would be to pay exchange to all the
ks in the state. It would be more expensive to collect on
hundred banks by means of resident agents than it would
to collect on the same one hundred banks and pay ex-
nge, but if the collection by agents in ten, fifteen, twenty
thirty places means the maintenance of the ability to
ect at par on the other banks in the state, then the sav-
is tremendous.

ur immediate object in presenting these checks over the
nter was not for the purpose of collecting the checks them-
es, but for the purpose of forcing these banks to remit at
. Our ultimate object in getting these checks and pre-
ing them over the counter by agents and demanding cur-
y and refusing to accept exchange was not the collec-
of checks themselves, but to establish our ability to col-
for member banks the checks of all non-member banks
he State. We proposed to do that by forcing those
ks that refused to remit at par by presenting their checks
their counter for payment in cash day after day. When
ame down to the question of the individual bank or a
ll group of banks refusing to remit at par, we, of course,
no other alternative but to present the checks and de-
d money. We had no other alternative than to present
checks and demand the money when the banks refused
emit at par. Our purpose in doing this was that if we
d to that in the case of the ten, fifteen, twenty or thirty
ks that refused to remit at par, in all probability addi-
al banks would have refused to do so, and consequently
would have lost our ability to collect at par on that
, and in that sense our action with each individual
k was for the purpose of maintaining our ability to col-
checks on the non-member banks of that state at par.

cannot answer the question as to whether our object in
enting these checks over the counter was a mere collec-
of the checks or to force the banks to remit at par with

"yes" or "no," because a "yes" or "no" answer would give an improper conception of our attitude in the whole matter.

The witness was asked the following question:

"I ask you if what you mean to say it not this? I want to be fair with you. If you think it is your duty to your member banks to collect checks at par on all non-member banks, and you conceived it to be your duty, under the act of Congress; and when a non-member bank refused to remit at par you conceived it to be your duty to make it remit at par; and the only way you could do that was to present checks over the counter day by day; and you knew that that would so embarrass that bank that it would agree to remit at par rather than let you present the checks over the counter, and you did that for the purpose of forcing that bank to remit at par, but that the ultimate purpose of doing that was because you believed that it would be to the interest of your member banks?"

A. We believe that it is our duty to the member banks under the act of Congress to establish as nearly as it can be done without undue hardship on the banks of this district, our ability collect checks drawn upon non-member banks without the payment of exchange. I conceive it to be our duty, when we have persuaded a very considerable number of the banks in a certain state to remit at par to induce the remaining banks to remit at par by the exercise of whatever rights the law gives us to do so. I believe we have a right, under the law at present, to present checks at the counter of the banks and require payment in money. I do not believe that such a demand would necessarily embarrass the bank to the point that its business would be in danger, but unquestionably it would cost the bank a considerable amount to provide itself day after day with currency with which to meet the checks, and I believe that rather that go to that expense that the bank will agree to remit in satisfactory exchange at par. That is the reason we do it—for the

purpose of maintaining our ability to collect checks on all the non-member banks in the State of North Carolina.

I testified in the Federal Court in Charlotte as follows:

"By the court to witness: Q. Isn't the custom of the Federal Reserve Bank to accept the payment of the checks by exchange; they couldn't get along by collecting money all the time, could they?

A. Unquestionably, if the Federal Reserve Bank had to send an agent to a non-member bank every time it had a check on that non-member bank and had to pay his railroad expenses and his salary, or even if they had to employ a local agent, it would be an exceedingly expensive thing.

Q. Why do they do that?

A. Because they know that the non-member bank will send them by mail an exchange check rather than undertake to pay currency day after day for checks if they are presented. If the law were not in existence and the member banks were remitting to us in satisfactory funds an a par basis there would never have been any controversy. We would accept satisfactory exchange, that is to say, exchange which can be collected by us in one day.

Q. That would make you responsible for that exchange?

A. No, sir. I said that where personal presentation was made and where we accepted the obligation of the bank instead of accepting money that in my opinion we would be assuming a responsibility because we have a specific contract with every bank that deposits with us that the checks are to be collected in this way. We are not responsible until we receive final payment unless we have failed to use due diligence in the meantime.

Q. It would be safer for you to collect the check from the non-par people by regular method?

A. We are perfectly willing to collect the checks from the non-nember banks by mail; in fact, we prefer doing it that way if they will remit in satisfactory funds at par.

Q. Why is it that you demand the money?

A. We demand the money only in case the non-member bank refuses to remit by mail at par.

Q. Is the effort on the part of the Federal Reserve to compel the State banks to do away with the exchange?

A. Yes sir. To remit at par in satisfactory funds."

I think that I should add that it appears in other parts of my testimony, first that according to our understanding of the law we have no right to pay exchange, and it also appears in other parts of my testimony that our object in pursuing this course was to preserve our ability to collect checks at par on banks of the state.

At the hearing in the Federal Court in Charlotte I also testified as follows:

Q. When you fail to obtain the consent of a non-member bank to go on your par list and you receive checks drawn on that non-member non-par list bank for collection, your present method is to send that check either by an agent in person from a Richmond bank or some agent you select somewhere else for presentation?

A. We do not receive checks on non-member banks until they are on the par list.

Q. Never did?

A. No, not until we put them on the par list.

Q. You say, I am going to make this bank pay and I put it on the par list, and the bank declines to permit it, what do you do?

A. We send an agent to that bank or we appoint a local agent to present checks to that bank and we demand the money.

Q. If that bank will then and there agree to remit at par you will accept draft its correspondent in New York or in some other place?

A. Yes, provided our agent who presents the check can assure himself that that draft is drawn against a real balance and will be paid.

Q. You then look into the solvency, after you put it on your par list, to know whether you want it there or not?

A. When we have gotten to the point where we present checks in person to a bank and the bank agrees to go on the par list we are still confronted with that possibility and in that particular case we take steps to find out where the checks go.

Q. Let us assume that it is a bank whose solvency is absolutely unquestioned and it prefers to remain out of your system, refuses to remit its checks to you at par through the mails; you receive checks on it; there is no basis to question its integrity or its solvency or the perfect collectability of its draft on New York or with its correspondent in Richmond, and you present that check for payment and you demand currency; the bank tenders you a draft, the solvency of which you have no basis to question on earth, don't you refuse to accept it?

A. If they refuse to remit further at par we do.

Q. That has been your universal practice?

A. Yes, sir.

Q. If that bank will and there agree to, you will accept?

A. If we can satisfy ourselves or are satisfied, we do accept it then and henceforward we accept by mail.

Q. The only reason you won't accept it prior to that time is its refusal to go on your par list?

A. Yes, sir.

Q. Isn't that universally true?

A. Yes, sir.

"I would like to add to what I said in Charlotte that as appears in other parts of the testimony, our sole reason for pursuing this course was to preserve our ability to collect checks at par on this State."

"I also testified in the Federal Court in Charlotte as follows:

Q. Isn't it true that the demand of currency on each of these checks is not for collection purposes but for coercive purposes to put that bank on your par list?

A. If the non-member bank refuses to remit to us at par and if we present the checks there and we give them

the option to pay in currency or exchange from time to time, that bank can then compel us to send every day to the bank and present the checks.

Q. How does that bank compel you to take checks on it for collection; that is your own voluntary act, isn't it?

A. Yes sir. It compels us whenever we have taken checks and want to collect them, if we do not send and demand currency but if we will take either currency or exchange whichever the bank chooses to pay us, then they can compel us to send to the bank every day in the year to collect the checks.

Q. You can avoid that very easily by not taking checks on them?

A. It can be avoided by refusing to take checks on them.

"I also testified in Charlotte, as appears from page 36 37 of my testimony, as follows:

I don't think that any bank can stand day after day paying all of its checks in money; it will have to import that money, as I stated, from its correspondent, and by requiring them to pay money for a while we demonstrate to them that it is cheaper for them to pay us by a check on its correspondent than it is for them to pay us money each time.

Q. You say you decline to accept exchange draft perfectly good instead of the currency because you think it will promote your par clearance system of collection?

A. Because it is the only way to preserve our ability to continue to collect checks at par on that bank.

Q. It is the only power you have over that bank?

A. Yes sir.

Q. And you propose to exercise it?

A. Yes sir, by the orderly presentation day after day of that day's checks.

"I would like to add this explanation. What I mean by the bank not being able to stand—I mean the bank would not in all probability be willing to stand the expense of doing that.

"I said that we declined to accept exchange drafts which

were perfectly good because to demand cash was our only way of maintaining our ability to collect at par. The only power that we have over the bank. The following question was asked me in Charlotte, and the following answer given by me, as appears from page 38 of my testimony, viz:

Q. And your motive in continuing to do what is expensive and difficult for you to do as compared with the other method is that you may wear him out before he wears you out?

A. Yes sir."

"I would like to add an explanation to that. According to my recollection that refers to a situation of this kind. The North Carolina banks, non-member banks, relied upon the statute as the basis of controversy in this suit, and so relying refused to send us by mail a check drawn against a collected balance with its reserve agents, but says that if we will send our man to the counter day by day they will deliver that same check without the deduction of exchange. The non-member bank knows, of course, that it is very expensive for us to send a man every day to its bank, and, expensive, though not quite so expensive, to appoint a local agent, and, therefore, in continuing to pay an agent day by day with a check, which he refused to send by mail, it is in our opinion, trying to wear out our patience. When we send an agent to the bank and demand currency, payment of which will ultimately be more expensive to the bank than the payment of exchange, we are trying to wear out the patience of the bank. It is a question of whose patience would last longer."

It is exceedingly difficult to say what would be the effect if every bank in North Carolina had to pay all its checks over its counter in cash every day. In the first place it would be a physical impossibility for us to make a demand on every bank in the State every day. Such a thing has never been done in the history of banking. A presentation simultaneously at all the counters of the banks in the State for six days, a period of a week, has never been done because I don't think it could possibly be done as a practical

proposition. Where the payment of currency—where the payment of checks by means of currency is made, whether that would precipitate a panic or not is difficult, if not impossible to say. Certainly it would be, to put every single bank in a state on the basis of paying in cash for all its checks simultaneously, would be a very radical change, but if all the banks were solvent, if they had collected ballances with correspondents and were given reasonable notice, I can't say that it would of necessity precipitate a panic to adopt that method of paying. It would hurt the bank—it would considerably decrease the earning power of the bank, but whether it would hurt in the sense of making them insolvent, but to take a particular case, know all the elements of a particular bank, an accountant with a knowledge of banking could probably calculate the effect to a reasonable extent, but to take that as a general proposition it is difficult to say except that it would necessarily decrease the bank's earning power to be required to carry in its vault currency enough to meet all its checks every day. On the other hand, I think some of the witnesses have testified, I think they are rather exaggerating the amount of currency that would be needed for such a thing. It is inconceivable to me that any more currency would be needed—that any more reserves would be needed to meet that situation than would be needed to meet the present situation. At present the reserves consist partly of cash in their own vaults and partly of bank balances with correspondents, but in the event of a bank undertaking to pay all of its checks in currency it, of course, would have to concentrate these reserves in its own vault, but I cannot see how it would require the carrying of any more reserves in one place than under ordinary conditions it carries in two places.

As to whether it would be bad banking for any bank to decide that it would pay all of its checks in cash out of the vault, I will say that I doubt very much whether any bank could decide that question. If a bank could arrange to have us send

all of its checks and present them over its counter, it would be very injudicious for it to do so.

As to whether an ordinary country bank could stand the effect of having its checks presented over the counter day by day and paid in cash for a considerable length of time and continue to do business at a profit, I think in a great many localities the country bank has sufficient capital in proportion to its deposits to do that. But the concentration of all its reserves in the shape of currency in its own vault rather than in deposits with the reserve agents would be expensive because the reserve naturally builds itself up on the books of these agents, and that is particularly true since the establishment of the Federal Reserve system and since the agent collects all of the collectible checks for that country bank through the Federal Reserve system, and receiving the credit on the Federal Reserve book gives the country bank credit on its own books. The country bank would then have to order currency from its agents and pay transportation charges. I think there has been some little unintentional exaggeration about the amount of these charges or the cost of the shipment of currency, but at any rate it would be expensive to the country bank to carry all its reserves in the shape of currency, because of the expense of shipping the currency and because of the loss of interest on its balances with its correspondents—but whether that would be a ruinous loss depends upon the circumstances. That in the sense of loss of profit it would be more injurious to the bank to undertake to carry enough cash in its vaults to pay its checks in cash over the counter than to agree to remit at par, that a loss of profit was as great a loss as any other loss.

This circular shown me was issued by the New York Clearing House. This circular is plaintiff's Exhibit K heretofore introduced. This circular is dated April 10th, 1920. It shows that the charge for collecting checks on North Carolina is one-tenth of one per cent.

At that time North Carolina was not an all par state and it is our understanding of this that North Carolina, when it became an all par state automatically changed to the twentieth of one per cent. Whatever is a four day point from New York. That is to say it takes one day for the check to go from the Federal Reserve Bank at Richmond to New York and North Carolina is on a three-day schedule. We send a check to North Carolina and receive returns on the third day and on the day we receive returns we give the Federal Reserve Bank of New York credit for the item and it gives its customer credit for the item on the same day. As a matter of fact these various credits are made without waiting for advice because they are made on the basis of our time schedule. I think North Carolina went from one-tenth to one-twentieth per cent. The Federal Reserve Bank in New York will credit the member bank for checks on North Carolina after four days and the member bank in taking this check on North Carolina makes a charge of one-tenth of one per cent where there is exchange charge of but one-twentieth of one per cent when all checks are collected at par. The Federal Reserve Bank makes no charge whatever against the member banks, it only handles the check for deferred credit. The member bank takes the check for immediate credit and makes an interest charge. The Federal Reserve Bank takes the check for deferred credit and makes no charge whatever. The New York bank that accepts from the merchant can charge whatever it pleases, and that is true of the member banks in Richmond. It is exceedingly difficult to tell what the exchange rate is in Richmond, as there is no exchange agreement, and so a Richmond bank has the liberty of making whatever collection contract it pleases with every single one of its customers and on every single check. I haven't any doubt that every single bank in Richmond has a number of different charges.

The Federal Reserve Board has under the law the power to regulate charges made by member banks. It has never yet exercised the power.

The witness was then asked the following question:

Q. I want to ask you this question—I don't know whether you can answer it or not—Is it not a fact that the Federal Reserve Board has attempted to enforce par clearance on member banks where it has no power to do so, and has not directed that the member banks shall collect checks at par, which it has the power to do? How is that, if you know?

A. I can only give my opinion.

The Federal Reserve Board, after a considerable time, got the New York Clearing House to make a reduction in its schedule of charges. The Federal Reserve Bank of Richmond had nothing to do with it.

As to whether a bank which is extending a credit to another bank controls its debtor bank, under the old system where the relations between banks was voluntary, where banks swung business to other banks and where the bank swinging that other business could take or reject at its own pleasure, unquestionably these things did exist, but under the Federal Reserve Bank the member bank is required to become a stockholder—not allowed—required. It cannot retire as long as it remains a national bank. The state bank under the law can retire. The bank is also positively required to keep an account and required to keep an account in a specified amount—no more nor less. It is not required to do any collecting business through the bank and not required to borrow money from the Federal Reserve Bank. The member bank is of necessity a stockholder and of necessity a depositor and the Federal Reserve Bank has unquestionably the moral responsibility of making loans to that member bank, but I want to say that the relations between the Federal Reserve Bank and its customers is on a very different basis from the relations between the country bank and its customers, and frankly I do not know of any case in which the Federal Bank of Richmond has felt that the fact that a member bank was borrowing or was not borrowing from it made no difference in its relations.

I didn't write a letter on February 11th in regard to par

clearance in North Carolina to the member of the 5th Federal Reserve District and suggest to the member banks that they could exert an influence on the non-member banks to come into the par clearance system by reasons of the indebtedness owing to the member banks by the non-member banks. The letter shown me, Exhibit L, was sent out by the Federal Reserve Bank of Richmond. The plaintiffs introduce in evidence the letter of February 11, 1921, which is as follows:

PLAINTIFF'S EXHIBIT L.

Federal Reserve Bank of Richmond
Par Clearance in North Carolina

February 11, 1921.

To the Member Banks of the
Fifth Federal Reserve District:

You have been advised of the passage of an Act by the Legislature of North Carolina which permits all non-member banks and trust companies in that State to charge a fee, not in excess of one-eighth of one per cent, on remittances covering checks; and to permit said banks and trust companies to pay checks when presented at their counters by the Federal Reserve Bank in exchange drawn on their reserve deposits in other banking institutions.

You were advised that, guided by the legal opinion of our counsel, we considered it our duty to continue to receive at par checks on non-member banks in North Carolina sent to us for collection by our member banks and other Federal Reserve banks, and attempt to sollect them at par in money; and that it was our purpose to refuse to accept an exchange draft in payment of such checks when presented at the counter of the bank upon which drawn; and, further, that in case of refusal to pay in money, it was our purpose to return checks upon which payment had been so refused, with a proper notice of dishonor in lieu of formal protest.

Acting under the plan above described, we have presented checks upon certain non-member State banks, and upon refusal of payment in money, we have taken the step above outlined. Upon presenting checks on certain other non-member State banks in North Carolina and demanding payment in money, we were served with an injunction restraining us from returning as dishonored when payment had been tendered in exchange all checks drawn upon said banks since the 5th day of February. We shall take proper steps under the circumstances, and the member banks concerned will be fully advised in detail.

The purpose of this communication is to set before you the following:

In putting into effect the Par Clearance Plan, we have been acting under the Federal Reserve Act as interpreted and administered by the duly constituted authorities, and in accordance with the decision of the United States Court of Appeals, Fifth Circuit, in the case of the American Bank & Trust Company et al. vs. the Federal Reserve Bank of Atlanta et al. As before stated to you the Par Clearance Plan is now operated with banks (national and state) comprising about 98 per cent of the banking resources of the United States. Organized legal opposition to the plan is confined practically to a few of the states in the southeastern part of the country.

Non-member banks all over the United States have been, and now are, receiving through the member banks of the Federal Reserve system the full benefits of the Par Clearance Plan; that is to say, they have enjoyed, and are now enjoying, the privilege of collecting without the payment of exchange, through the Federal Reserve system, checks on banks comprising about 98 per cent of the banking resources of the country. All of the non-member banks in this district are able to collect free of exchange charge checks on all banks in the

Par Clearance system, which includes all banks in the states of Virginia, West Virginia, Maryland, and the District of Columbia, as well as a considerable number of non-member banks both in North and South Carolina which have agreed to remit at par. The Par Clearance system has not yet been put in force among all the nonmember banks in South Carolina, but a number of non-member banks in that State have voluntarily agreed to remit at par.

It is appropriate to say that, in addition to all the advantages which the non-member banks have themselves been receiving through member banks from the operation of the Par Clearance system of the Federal Reserve Bank, they have been also receiving in the same way the protection of the resources of the Federal Reserve system to a very large extent. On November 15, the last date up to which we compiled the information, 170 member banks of this district were lending to the non-member banks \$36,166,283, which the member banks themselves were borrowing from the Federal Reserve Bank. It is not possible for the non-members to receive this protection or collection service in any other way.

Many non-member banks in North Carolina (which has been a par State since November 15), now acting under authority of the act above referred to, are attempting to take advantage of that provision of the act which gives them the option of tendering exchange drafts in payment of checks presented at their counters by representatives of the Federal Reserve Bank. We cannot, of course, accept such exchange drafts in payment of checks except at our own option. There appears to be an organized attempt to take advantage of the recently passed law.

We are not governed by the purpose or desire of injuring non-member banks, and such action as we have taken has been under the authority of the Federal Reserve Act and the Regulations of the Board and the ad-

vise of counsel. We, however, consider it our duty to protect the interests of our member banks in every proper way. It is plain that if the non-member banks of North Carolina take advantage of the act herein described, it will be to the injury and loss of all of our member banks. We, therefore, submit that it is for them to consider upon what terms the non-member banks shall continue to enjoy through them the support and protection of the resources of the Federal Reserve system and privileges of its Par Clearance system, and consider the extent to which fairness and mutual concession and their allegence to the Federal Reserve Bank, in which they are sole stockholders, should lead them in their dealings with non-member banks.

We believe the Act recently passed by the North Carolina Legislature giving non-member banks the power to pay one check with another, to be unconstitutional and against the public interest and likely to lead to confusion and loss. On the other hand, we believe the Par Clearance plan to be wholly in the public interest and the interest of all bank customers, and consequently, directly and indirectly, to the interest of all banking institutions; and believe that the operation of this clearing system, involving the quickest and most direct presentation of checks heretofore possible, is essential to the development of an effective country-wide exchange system, and essential to the development of sound and scientific banking.

Respectfully,

FEDERAL RESERVE BANK OF RICHMOND.

He was asked the following question: 'If the policy which your bank inaugurated in the Fifth District was not laid down by the Federal Reserve Board and was not the same policy which was applied in various other districts of the United States under the supervision of the Federal Reserve Board?'—to which he answered as follows: I think the best

answer I can give to that is that the policy of the Federal Reserve Board, the policy of par collection as far as it is laid down by the Reserve Board is laid down under Regulation J, copy of which has been filed. As far as the conduct of the par point campaign in the various districts, these are determined by each Federal Reserve Bank, and I cannot say of my own knowledge how these campaigns have been conducted.

I have read the 7th annual report of the Federal Reserve Board at page 64. I am not sure, however, that that refers to the 5th District. Plaintiffs offer in evidence page 64 of the 7th annual report of the Federal Reserve Board, which is as follows:

Annual Report Federal Reserve Board

> The provisions of the Federal Reserve Act which relates to check clearing and collection were last amended by the act of June 21, 1917. Section 16 provides that the Federal Reserve Board may act as a clearing house for the Federal Reserve Banks and may require those banks to act as clearing houses for their member banks. Section 13 as amended by the so-called "Hardwick amendment" of June 21, 1917, provides that Federal Reserve Banks may receive on deposit "checks and drafts payable upon presentation," the checks which those banks are authorized to receive on deposit are not being limited, as they were prior to the amendment, to checks on "solvent member banks." The proviso at the end of the first paragraph of Section 13 reads:
>
> That nothing in this or any other section of this act shall be construed as prohibiting a member or non-member bank from making reasonable charges, to be determined and regulated by the Federal Reserve Board, but in no case to exceed 10 cents per $100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection or payment of checks and drafts and remission therefor by exchange or other-

wise; but no such charges shall be made against the Federal Reserve Banks.

As construed by the Attorney General, and as recently held by the United States Circuit Court of Appeals, Fifth Circuit, these provisions prohibit the Federal Reserve Banks from paying exchange charges to member or non-member banks.

It is apparent that if Federal Reserve Banks in their capacities as clearing houses are to render full service to their member banks, they must clear checks drawn on all banks including those non-member banks, now few in number, which decline to remit at par. Consequently, the Board has approved the action of the Federal Reserve Banks not only in soliciting non-member banks to agree to remit at par but also in collecting by presentation at the counter checks drawn on non-member banks which decline to remit at par.

Opposition on the part of the banks against par collection has taken various concrete forms. Since Federal Reserve Banks can not pay exchange charges, when non-member banks refuse to remit at par the Federal Reserve Banks have no choice, if they are to collect the checks drawn on those non-member banks, but to make presentation of such checks at the counters through selected agents. These agents may be employees of the Federal Reserve Banks or may be banks, express companies, or other suitable agents located in the same town. The employees and agents of the Federal Reserve Banks have encountered various obstacles in making presentations of checks, such as the tender of payment in a manner calculated to take as much time as possible, or the refusal of payment in reliance on the inability of the agent to find a notary public willing to make protest. The Board has been advised of one instance where a duly appointed agent has within a few days after appointment given notice to the Federal Reserve Bank that he

would no longer act as agent for fear of injury to his business.

Other banks, including some member banks, have resorted to the device of stamping legends on their blank checks to the effect that the check is not valid if presentation is made through the Federal Reserve Banks.

I know that there has been a par clearance campaign in each of the other reserve districts. I know that in the way I know many other things connected with the system. I am perfectly satisfied there has been. We have not yet enforced par clearance in the State of South Carolina. That state is included in the 5th Federal District.

RE-DIRECT EXAMINATION.

We have not undertaken to extend the par clearance system into South Carolina because it is our understanding that the extension of the par clearance system is to be gradually, but as rapidly as it is practicable to make it, and have felt, pending the result of this action, that it would be unwise to attempt to extend the campaign further into South Carolina.

DIRECT EXAMINATION.

J. G. FRY, being duly sworn, testifies:

My name is J. G. Fry. I am 38 years of age, and am assistant agent of the Federal Reserve Bank. Up until the 15th day of this month (Feb. 1922) I was in charge of the operating details of the par collection campaign. I had supervision of Mr. Tucker, Mr. Wheelwright and Mr. Clements. I got the specific general instructions from senior officers of the bank. I instructed agents presenting checks that they were under no circumstances to save up checks for any longer than the physical conditions rendered absolutely necessary. At the same time I gave the instructions as to where each man was to go, and in that my decision

was based on the size of the letters and the importance of the case. I arranged the men and forwarded the checks to them in such a way as to enable them to present the checks as soon as possible after the receipt by the Federal Reserve Bank. In many cases it worked a tremendous hardship on the men to cover the ground.

In reference to the testimony of Mr. Herring of the Bank of Stanfield, the facts were as follows:

On May 9th, 1921, we received from the Bank of Stanfield a notice that that bank would no longer remit at par. We had on that day a very small cash letter, and just as soon as practicable we sent one of our representatives to Stanfield. When he reached Stanfield he had talked with Mr. Herring and Mr. Herring suggested that he would like for him to see his president, Mr. Harris, who lived at Albemarle, so Mr. Talley went to Albemarle to report to Mr. Harris. Mr. Harris was away and I then suggested to Mr. Talley that he make arrangements with Mr. Henderson of Charlotte to make regular presentation of our checks for payment in cash. Then on the 11th day of June, which was Saturday, we saw that we would need Mr. Talley in the neighborhood of Stanfield, so I suggested to Mr. Talley that he go to this other point and then try again to see Mr. Harris, the president of the bank, because the cashier had previously asked Mr. Talley to talk to Mr. Harris about it. Mr. Talley left Richmond on Monday night, the 13th. You can readily understand that he could not go to Charlotte and drive to this other point and to Stanfield and to Albemarle and make presentation ahead of the 18th. We wanted Mr. Talley to take the letters to him at Stanfield and on that trip he went to Albemarle. The next to the largest letter was $118.59, which was the letter of the 17th and presented on the 18th, and there was no delay in the presentation of that letter. The reason any of these letters were delayed was that it took time for Mr. Talley to get to Charlotte, get to Albemarle and get word back to us and we were trying our best to

find out what Mr. Harris wanted to do, as the cashier had expressed a desire that we see Mr. Harris.

That as to the statement that at sometimes two or three letters were presented at one time, the facts were as follows: A number of times the letters were sent to the bank on which they were drawn, the bank having previously agreed to remit at par and give reasonable notice before it would discontinue remitting at par, but without notice they would hold up the letters and checks and send them back to us and at the time we got these checks back we would get that day's checks. On the day that we received the returned checks our man would leave Richmond that night with two letters in his hands. While he was on his way there the next letter would come back unpaid and that would cause a delay or an accumulation, because we would necessarily wait until we heard from our man as to what had been done at the other end before we would send these checks to him, and, therefore, there would be a day or two's checks on hand. At other times we had as many as one hundred banks that were giving this trouble in one day and it was a physical impossibility to get the right kind of man to make the presentation on that many banks each day, but we did send them as fast as we possibly could get them out and make the presentation as orderly as possible.

I had charge of the agents, who were sometimes forced to go and investigate or send the letters to a bank which we expected to remit at par, and which had stated that it would remit at par, but for various reasons failed to do so. We employed the same man in most every case. These instructions were very frequent during the fall of 1920 and the spring of 1921. On many occasions it happened that the banks mailed to the Federal Reserve Bank of Richmond a draft in payment for checks drawn upon the bank, which draft was refused payment by the bank upon which it was drawn. In some of these cases, a draft would come in today and another tomorrow and another the next day,

and we found ourselves with as many as four drafts upon our hands before we found out where we stood.

CROSS-EXAMINATION.

The Federal Reserve Bank would be perfectly willing to accept exchange drafts from a large majority of the plaintiff banks in this suit if they would agree to remit at par. If a bank is in such condition that we are afraid when it sends us a draft that it won't be paid, we accept checks on that bank in North Carolina for collection. I do not say that we would accept through the mail a draft on the reserve deposits of a bank in North Carolina if it would agree to remit at par, whether we thought the bank was solvent or insolvent. If we have checks on a bank and we have reason to believe that the bank is not solvent, we take no chances. We would accept the check and present it at the counter. We wouldn't send the checks. Accept the checks. We could not accept his draft at the counter or in Richmond. Not on that class of banks. We won't accept the exchange draft of the Page Trust Company over the counter at par if the Page Trust Company refuses to remit thereafter at par by mail. I know that the Page Trust Company is solvent. I have never had one of their drafts turned down. I know that the Farmers & Merchants Bank of Monroe is solvent. We will take its checks through the mail if it will remit at par. We will take its checks over the counter if it will agree to remit at par thereafter, but we won't take its checks over the counter unless it will agree to remit at par. We have never had any trouble with any of the checks of the Farmers & Merchants Bank. That bank remitted at par for a month or two. I received instructions from the Governor and the Deputy Governor of the Bank not to accept drafts at the counter of the bank in payment of the checks drawn on the bank unless the bank would agree to remit at par thereafter. We had from six to fourteen of these

'par pointers' circulating in North Carolina. We had as many as fourteen at one time. We started them to work whenever the occasion arose. When a bank failed to remit for the checks sent to it by us, or notified us that it would not remit at par, or if we received a check from any bank that was some distance, we sent out men there to try to collect the money. I have no record as to when these men were employed. We had several men in our department called the Bank Relations Department. These men were later used on 'par point' work. These men were started out to work presenting checks in North Carolina as each occasion arose. We started on the night that par clearance went into effect. We used as many as fourteen at one time in North Carolina. They were sent into North Carolina with checks to present over the counters of those banks which did not want to remit at par. They were sent to demand cash in every instance. In covering one hundred counties in North Carolina there would necessarily be some slight delay if you had fourteen men working and making presentations of checks on 275 banks. It would be impossible to present the checks on those 275 banks without having an accumulation of several days unless we had sufficient men placed at the proper points to receive the checks promptly by mail and make presentation the same day. There were times when we could not have enough men at the points. We had local agents at Asheville, Charlotte, Raleigh, and other points. We had six or eight in all, but all at the same time. I testified in Charlotte about what I estimated were the profits from exchange on checks. I testified that the profit would be an amount equal to approximately six-tenths of one per cent of the deposits in the bank. I don't say that that estimate would apply in each and every individual case. The paper shown me is the affidavit which I filed with the Federal Court at Charlotte. Plaintiffs offer this affidavit in evidence, which is as follows:

DEFENDANT'S EXHIBIT No. 11.

(By agreement of the parties the following attached summary of the affidavit of J. G. Fry, dated June 29, 1921, was shown in evidence as Defendant's Exhibit No. 10 and will be inserted in the record.)

J. G. Fry, being duly sworn, deposes and says that the attached sheets represent a table showing the estimate of the earnings from exchange upon checks of the banks which had on June 21, 1921, become plaintiffs in the suit of the Farmers & Merchants Bank of Monroe, et als. v. Federal Reserve Bank of Richmond.

Column 1 upon said table gives the name of the bank. (There were 260 banks and branches listed in this column.)

Column 2 gives the period of time during which the Federal Reserve Bank of Richmond actually collected checks upon the banks named. If there is no date in this column, it means that the Federal Reserve Bank of Richmond collected checks upon the bank named from November 15, 1920 to February 5, 1921. (Dates in this column when given were between 11-15-20- and 2-5-21.)

Column 3 gives the amount of checks sent to the parent bank and branch or branches, if any, from November 15, 1920 to February 5, 1921, unless other time period is shown in column 2. (The total of each branch was shown separately in column 3, and the aggregate of the bank and all branches extended into 4.)

Column 4 gives the total of checks sent to the parent bank and branch or branches, if any, from November 15, 1920 to February 5, 1921, unless other period is shown in column 2. (The total of this column was $42,257,310.49.)

Column 5 gives the amount of exchange the bank would have received in one year, assuming the volume of checks would have continued at the same rate for a year and

the bank would have deducted exchange at the rate of one-eighth of one per cent on the said volume of checks. (The total of this column was $237,404.00.)

Column 6 gives the estimated gross income from exchange on checks and drafts and other collection items for one year, based on six tenths of one per cent of the total deposits of the bank named as shown by the Report of Condition of North Carolina State Banks as of June 30, 1920 in the report of the Corporation Commission of the State of North Carolina. (The total of this column was $345,556.00.)

In column 6 when the words "No report" appear, it signifies that there is no statement of the condition of the bank named in the report of the Corporation Commission of North Carolina dated June 30, 1920 and that presumably such bank was not in business upon that date. ("No report" was opposite the names of 15 banks and branches.)

(signed) J. G. FRY.

Subscribed and sworn to before me this 29th day of June, 1921.

Notary Public.

In February right after the injunction suit was commenced we had the largest number of men in North Carolina that we ever had at work in this State. During these months beginning November 15th, 1920, we had an average of five men at work in the State. The other fourteen men were employed in other work of the Bank."

W. H. WHEELWRIGHT, witness for the defendant, testifies as follows:

DIRECT EXAMINATION.

"I am forty-six years of age, and am with the Bank Relations Department of the Federal Reserve Bank of Rich-

mond. I was engaged in the 'par point' campaign in North Carolina. I sometimes substituted for Mr. Fry. I was in North Carolina most of the time. I called on Mr. Seawell, of the Siler City Loan & Trust Company. We never made arrangements with any bank to handle checks on another bank, except when the bank on which the checks were drawn was unwilling to remit at par. Occasionally when there were two banks in a town and one bank would request the checks of another.

CROSS-EXAMINATION.

I had instructions that unless the bank would agree to remit at par, not to accept anything but cash in payment of checks. I presented quite a number of checks in this State. I was busy practically all of the time for several weeks."

CHAS. A. PEPLE was recalled and stated that he testified in Charlotte as follows:

EXAMINATION BY PLAINTIFFS.

I don't think that any bank can stand day after day paying all of its checks in money; it will have to import that money, as I stated, from its correspondent, and by requiring them to pay money for a while we demonstrate to them that it is cheaper for them to pay us on a check on its correspondent than it is for them to pay us money each time.

Q. You say you decline to accept exchange draft perfectly good instead of the currency because you think it will promote your par clearance system of collection?

A. Because it is the only way to preserve our ability to continue to collect checks at par on that bank.

Q. It is the only power you have over that bank?

A. Yes sir.

Q. And you propose to exercise it?

A. Yes sir, by the orderly presentation day after day of the days checks.

Q. And your motive in continuing to do what is expensive and difficult for you to do as compared with the other method is that you may wear him out before he wears you out?

A. Yes sir.

I also testified in Charlotte as follows:

Q. Is the right to pay a check by means of exchange draft rather than the right to pay it in currency at its counter a valuable right to a bank?

A. I think that it is, beyond question, for the reason that it is the practice of many banks, particularly the small country banks, to do the bulk of their collecting through their correspondents in the larger cities, consequently the tendency is to build up a balance in their reserve banks in those cities; to pay obligations of a bank in checks on those reserve balances merely requires the drawing of a check against money which is already in those banks in those cities. On the other hand, to be required to pay in currency at its own counter whenever the volume of demand exceeds the volume of currency acquired locally it is necessary to have the currency shipped from their reserve agents to themselves, involving transportation charge and the loss of interest. On the other hand, if obligations can be paid by checks on those banks the checks are not charged to their accounts until they reach the bank on which they are drawn and consequently the interest lasts a little longer.

The court then found certain facts and rendered judgment, as appears from the record proper.

To this judgment the defendant excepted, filing exceptions which appear in the record proper, and appealed to the Supreme Court. Notice of appeal waived. Appeal bond was fixed in the sum of $100.00. By consent the defendant was allowed sixty days to serve case on appeal, and plaintiffs were allowed sixty days thereafter to serve counter case or exceptions.

It is agreed that the foregoing shall constitute the case on appeal to the Supreme Court.

H. W. ANDERSON,
M. G. WALLACE,
H. G. CONNOR, JR.,
C. W. TILLETT, JR.,
Attorneys for Appellants.

STEELE, PARKER & CRAIG,
ALEX N. SMITH,
Attorneys for Appellee.

UNDERTAKING ON APPEAL.

North Carolina—Union County.
In the Superior Court.

(Title of Cause)

Whereas, the Federal Reserve Bank of Richmond has appealed from the judgment entered by Judge Webb, the judge presiding in the above entitled case, and has appealed to the Supreme Court.

Now, therefore, we, the Federal Reserve Bank of Richmond, as principal, and the National Surety Company of New York, as surety, hereby undertake to pay all costs that may be awarded against the said Federal Reserve Bank of Richmond, Virginia, by reason of the taking of such appeal, not to exceed the sum of one hundred dollars ($100.00).

Witness the following signatures and seals.

FEDERAL RESERVE BANK OF RICHMOND,
By GEO. J. SEAY,
Governor.

NATIONAL SURETY COMPANY,
(Seal) By MAX T. PAYNE,
Attorney in Fact.

Attest:
(Seal) GEO. H. KEESEE,
Cashier.

DEFENDANT'S ASSIGNMENT OF ERROR.

The defendant, the Federal Reserve Bank of Richmond, assigns as error:

1. That his Honor found as a fact "after the publication of plaintiffs in said excepted class, the defendant did not receive checks on plaintiff banks and had no duty to perform with respect to same." For such is not a question of fact, but a question of law, and as a question of law, his Honor erred, as he should have found as a conclusion of law that under the provisions of the Federal Reserve Act, it was the duty of the defendant bank to accept from its member bank for collection, checks on the plaintiffs and to collect the same without deduction for exchange, as set forth in the defendant's First Exception.

2. That his Honor found as a fact, that part of finding of fact No. 18 as follows: "Or else their orderly business will be so deranged by having to carry excessive cash reserves in their vaults as to deminish their lending power in their several communities and threaten their continued success and solvency," for the reason that the said finding of fact is not supported by the evidence and there is no evidence in the case from which such finding of fact may be made, as set forth in the defendant's Second Exception.

3. That his Honor erred in finding of fact No. 19, as set forth in the defendant's Third Exception. The defendant insists that while it may have been the natural and necessary effect of including the plaintiff banks in the par list that all checks drawn upon the plaintiff banks, circulated outside their respective places of business, would pass through the hands of the defendant for the purpose of being collected, that such a course did not amount to an accumulation. That his Honor in finding of fact No. 7 in respect to this is a true and correct statement of the natural effect of the publication of the plaintiff banks upon the par list, but that the fact that practically all checks drawn upon the plaintiff banks and other banks in North Carolina would

pass through the hands of the defendant for collection, when he defendant published that it would collect such checks at par, did not cause any greater amount of checks to be drawn upon the plaintiff banks and did not increase the number of checks presented to the plaintiff banks for collection.

4. That his Honor erred in finding of fact No. 20, as set forth in defendant's Fourth Exception. While it may be true and is not denied that the publication of the plaintiff banks upon the par list caused the convergence of checks into the hands of the defendant for collection, such convergence did not amount to an accumulation and, while in some instances such a course of business might delay the presentation of such checks to the banks upon which they were drawn beyond the time when such checks would have been presented according to the practice prevailing prior to the publication of such banks upon the par list, such delay, if there was any, did not and could not have resulted in greater accumulation of checks than would have otherwise have occurred; for that whether or not checks were collected at par did not and could not have caused more checks to have been drawn than would have otherwise have been drawn, and that such a course of business, while causing the convergence of such checks into the hands of the defendant, did not and could not have caused a greater accumulation of such checks in so far as the plaintiffs are concerned.

5. That his Honor erred in his conclusion of law No. 1 as set out in defendant's Fifth Exception; for that his Honor should have held that the act of February 15, 1921, in effect was in conflict with and in violation of the constitution of the United States and of the amendments thereto and laws passed in pursuance thereof as set out in the defendant's answer filed in this action and especially with the following provisions of the said constitution, amendments and laws:

(a) The tenth section of Article No. 1 of the Constitution of the United States, because it authorized the tender

in payment of debts of something other than gold or silver coin.

(b) The Fourteenth Amendment to the Constitution of the United States, as it deprives the defendant of liberty of property without due process of law.

(c) The Fourteenth Amendment to the Constitution of the United States, for that it denies to the defendant the equal protection of the laws.

(d) The Constitution of the United States and the act of Congress known as the Federal Reserve Act, in that it interferes with the operation of the defendant bank, which is a Federal agency with certain powers and duties to perform under the laws of the United States, and is in conflict with the provisions of the Federal Reserve Act.

6. That his Honor erred in his conclusion of law No. 2, for his Honor should have held that the plaintiffs had no legal right to make a charge for remitting through the mails the proceeds of checks from one place to another, but that if such charge is made, can only be made by special contract.

7. That his Honor erred in his conclusion of law No. 3 as set forth in the defendant's Seventh Exception; for that his Honor should have held that only lawful currency could be tendered in payment of checks drawn on the plaintiff banks when such checks were presented at their counter for payment, and that the Act of February, 1921, in attempting to confer upon the plaintiffs the right to discharge such checks when presented for payment, with the tender of drafts drawn by the plaintiffs upon their reserve deposits, was in violation of Section Ten of Article 1 of the Constitution of the United States, and his Honor should have held that the refusal of the plaintiffs or either of them to tender lawful currency in payment of such checks when so presented was a dishonor of such checks.

8. That his Honor erred in his conclusion of law No. 4, for his Honor should have held that the holder of a check, when it was presented to the bank upon which it was drawn,

ıad the legal right to refuse to accept anything in payment hereof other than lawful currency and, when payment in awful currency was refused, the said check was thereby dishonored, and the holder had the legal right to publish and declare the said check to have been dishonored and to protect the same, and that the drawee bank had no legal right to discharge said check by the tender of an exchange draft under the terms and conditions of the said act of February 5, 1921, for the reason more specifically set forth in the assignments of error No. 5 and No. 7.

9. That his Honor erred in enjoining the defendant from refusing to accept such draft when tendered by the plaintiff banks in payment of checks drawn on them, and from returning said checks as dishonored, when a tender was made of such exchange draft in payment thereof, and in enjoining the defendant from protesting for non-payment any checks, payment for which lawful currency had been refused, for that any act of the Legislature of North Carolina, in accordance with which said injunction was issued, was null, void and of no effect, because in conflict with and in violation of the Constitution of the United States, the amendments thereto and laws passed in pursuance thereof as more fully set forth in the answer of the defendant filed in this action and as likewise set forth in defendant's assignment of error No. 5, and for the further reason that said injunction fails to except from its operation such checks and drafts as are by the terms of the act especially excepted from the operation of said act. That is to say, checks and drafts which are payable to the Government of the United States or the State of North Carolina or upon the face of which the drawers have provided that the same shall be payable in cash when presented by the Federal Reserve Bank or some agent thereof.

10. That his Honor erred in enjoining the defendant from publishing or authorizing the publication of the name of any of the plaintiff banks, literally or by implication, in any list or other publication designed for circulation among

banking institutions generally, regardless of the means employed to designate such list or publication, unless and until the bank thus published or included should have previously given its consent to such publication for that there is allegation in the pleading or prayer in the complaint upon which this section of the injunction order can be based and for the further reason that the Federal Reserve Act authorizes the defendant to accept for collection checks or drafts within its district without discrimination as to the persons upon whom such checks are drawn and the true construction of the Federal Reserve Act, of necessity, authorizes the Federal Reserve Bank of Richmond to publish or announce to the public, and particularly to its member banks and other Federal Reserve Banks, the fact that it is authorized to accept checks upon any bank or other person within its district and also that the Act of Legislature of North Carolina, if constitutional, does not prohibit or attempt to prohibit the Federal Reserve Bank of Richmond from collecting checks upon a State bank of North Carolina or from accepting such checks for collection, but makes such checks payable by means of exchange drafts upon the drawee bank, for his Honor's injunction awarded of the Superior Court of Union County will prohibit the Federal Reserve Bank from advertising its willingness to accept checks from one of its plaintiffs, and also injunction awarded by the Superior Court of Union County contains no exception or modification permitting the Federal Reserve Bank to announce its willingness to accept checks on the plaintiff banks when the drawers of such checks have expressly made such checks payable in cash without deduction for exchange when presented by a Federal Reserve Bank.

CONNOR & HILL,
HENRY W. ANDERSON,
M. G. WALLACE,
C. W. TILLETT, JR.,
Attorneys for Defendant.

CLERK'S CERTIFICATE.

State of North Carolina—Union County.

I, R. W. Lemmond, Clerk Superior Court, of Union County, N. C., do hereby certify that the foregoing is a true and a perfect transcript of the record, in a civil action pending in said court wherein Farmers & Merchants Bank, et al., are plaintiffs and Federal Reserve Bank of Richmond, Va., is defendant.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Monroe, April 25, 1922.

Clerk Superior Court, Union County, N. C.

North Carolina Supreme Court, Spring Term, 1922.

#419, Union.

[Title omitted.]

Appeal by Defendants from Webb, J., Feb. Term, 1922, of Unio

Opinion.

This action was brought by thirteen banks and trust compani organized under the laws of this State which are not members of t Federal Reserve System, against the Federal Reserve Bank of Ric mond, Va., to obtain an injunction to prevent the Federal Reser Bank from refusing to accept exchange drafts drawn by the pla tiffs on their reserve deposits in payment for checks presented at t counter of plaintiff banks and from returning as dishonored che drawn by various depositors upon the plaintiff banks which had b presented at their counters by the Federal Reserve Bank of Ri mond but for which the plaintiffs had tendered drafts drawn them upon their respective reserve depositories. A temporary straining order was awarded in accordance with the prayer of complaint. The action having been brought by said banks for benefit of themselves and such other like institutions who mi join in the suit and the restraining order providing that all s institutions might become plaintiffs in the action and have the b fit of said restraining order, some 265 state banks and trust compa have become parties plaintiff as appears from the record.

By agreement between counsel, trial by jury was waived and consent the judge found the facts and upon the said finding of facts adjudged:

(1) That the defendant, Federal Reserve Bank of Richmon hereby enjoined from refusing to accept exchange drafts when dered by the plaintiff banks in payment of checks drawn on t under the option given said banks under provisions of Chapte Laws N. C. ratified 5 Feb., 1921;

(2) The said defendant is hereby enjoined from returning as honored any check, payment for which in exchange drafts by p tiff banks or either of them, has been tendered under the provi of said act and the defendant refuses to accept the same;

(3) The said defendant is likewise enjoined from protestin non-payment any check, payment for which in exchange draf plaintiff banks, or either of them, has been tendered under the visions of said act and defendant refuses to accept the same;

(4) The said defendant is likewise enjoined from publicati authorizing the publication of the name of any of the plaintiff b literally or by inclusion, in any list or other publication designe circulation among banking institutions generally, regardless o name employed to designate such list or publication unless and

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the bank thus published or included shall have previously given its consent to such publication.

Appeal by the Defendant.

Alex W. Smith and Stack, Parker & Craig for plaintiffs.

Connor & Hill, Henry W. Anderson, M. G. Wallace and C. W. Tillett, Jr. for defendant.

CLARK, *C. J.:* The defendant, Federal Reserve Bank of Richmond, is a banking corporation duly organized under the Acts of Congress and especially under a certain act known as the Federal Reserve Act. It is one of the 12 Federal Reserve Banks which were organized under the terms of that act and does business in accordance therewith, especially with the national banks and state member banks in the Fifth Federal Reserve District which consists of a portion of the State of West Virginia, the whole of Maryland, the District of Columbia, Virginia, North Carolina and South Carolina. Under the terms of this act, the member banks, which are the national banks in the above mentioned district and also certain state banks therein, which have qualified for and been admitted to membership in the Federal Reserve System, are required to keep and maintain with the Federal Reserve Bank of Richmond certain balances as reserves. The member banks create these balances by sending to the Federal Reserve Bank for collection checks or other instruments which they have received on deposit or for collection.

Since the business of all banking institutions consists largely in the handling of checks, it is clear that if the Federal Reserve Bank is to discharge efficiently its function as a reserve depository of its member banks, it must be able to collect their checks and other instruments which are the ordinary means of making settlement of accounts and transmitting funds. When the Federal Reserve Banks were first organized they were not expressly empowered to accept for collection any check unless it was drawn upon a member bank or other Federal Reserve Bank. Since member banks receive checks not only upon other member banks but also upon non-member banks, and since the member banks which include most of the larger banks of the country, acted as agencies through which the non-member banks collected checks which they had received, it soon became evident that if the Federal Reserve Banks undertook to collect checks upon their member banks but could not collect for member banks checks upon non-member banks, a vast majority of checks upon member banks would pass through the Federal Reserve Banks while checks on non-member banks would be collected through other agencies.

As the amount of the checks which any bank receives upon others and the amount of checks upon itself which it is compelled to pay, will usually be about the same, if a Federal Reserve Bank could handle all checks upon member banks but could receive from member banks only a portion of the checks which they themselves receive, in the course of time the flow of checks would be unequal and

the member banks would be placed at a great disadvantage in their efforts to maintain proper reserves. As a consequence, Congress by the Act of 7 Sept., 1916 and of 21 June, 1917, amended Sec. 13 of the Federal Reserve Act and authorized any Federal Reserve Bank to receive for collection from its member banks "checks and drafts payable upon presentation in its district", thus removing any limitation upon the power of the Federal Reserve Bank to receive checks. From the very nature of a check no person is obliged to consider the drawee, or person upon whom it is drawn, before receiving it either as a holder or as an agent for collection.

Under the law before the last mentioned amendment to the Federal Reserve Act, Federal Reserve Banks were required to receive checks upon member banks for collection at par, and were, therefore, compelled to require member banks to pay them the full face amount of all checks received. It is obvious that if member banks were compelled to pay the full face amount for all checks handled through the Federal Reserve Banks but such banks could not require non-member banks to pay the full face amount on checks drawn upon them, a great inequality would result because non-member banks would, through the agency of their member bank correspondents, collect all checks upon any member bank at par; but would not pay to member banks checks drawn upon themselves at par. With this in view, Congress expressly provided by the amendment of 21 June, 1917 that no charge for the payment of the checks and drafts and the remission therefor by exchange or otherwise shall be made against the Federal Reserve Bank.

In exercise of the power thus conferred, the Federal Reserve Bank of Richmond undertook to make arrangements with all non-member banks in its district under which they would agree to remit at par for all checks which the Federal Reserve Bank received upon them. Prior to this time, it had been the custom of many small banks, especially those located in remote sections and thus free from competition, to refuse to remit the full face amount for checks drawn upon them which were sent through the mails, but they insisted that inasmuch as the check called for payment in money at their counters and not for a remission by draft or otherwise, they could refuse to pay any check until it was presented at their counters and that therefore if they undertook to remit for checks sent them by means of an exchange draft, they could, in consideration of their waiver of direct presentation demand a discount and remit not the full face amount of checks, but some lesser sum. This is called an exchange charge for remitting for checks. The amount of this charge or discount exacted in consideration of payment by draft rather than in cash varied, but usually ran from 1/10 to ¼ of 1% upon the amount of all checks so paid.

Many non-member banks refused to make any agreement to pay the Federal Reserve Bank at par for checks sent them for collection through the mails. The Federal Reserve Bank of Richmond was prohibited by the Federal Reserve Act from permitting any discount to be deducted from the face amount of checks which it held for collection. It sent representatives to the non-member banks in N. C. urging them to agree to remit at par, explaining that it believed that

ch practice would be for the mutual convenience of both parties d that an insistence by the non-member banks on their strict legal ht to have a check presented for payment at their counters and to y the same only in legal money would be an inconvenient and exnsive method of dealing, not only to the Federal Reserve Bank of chmond, but also to the non-member banks. The non-member nks were at the same time also notified that if they should insist on their legal right to require a presentation at their counters of checks drawn upon them when handled by a Federal Reserve nk, the Federal Reserve Bank would be compelled to present the ecks at their counters by means of duly authorized agents but if mpelled to take this course the Federal Reserve Bank would, after ch presentation, refuse to waive its right to insist upon payment in al tender money.

The Federal Reserve Bank made arrangements with certain resints of the towns in which various non-member banks were situated collect checks as its agents by means of personal presentation or it t an employee to such town to act as its agent.

On 15 November 1921, the Federal Reserve Bank of Richmond ve notice that it would collect checks upon all non-member banks N. C. by sending them through the mail if the bank would agree pay the full amount due upon the checks, or by personal presentan by the agent if the non-member bank refused to pay the full e amount of the check unless presented personally at its counter.

The Legislature of N. C., Laws 1921, Chapter 20, authorized te banks in N. C. to charge a fee not in excess of 1/8 of 1% on nittances covering checks, or a minimum fee of 10¢, and provided at in the event a Federal Reserve Bank, post office, or express comny should present checks at the counters of the drawee bank and mand payment in cash, such drawee bank should be permitted to y by means of a draft drawn upon its exchange deposit, excepting wever checks payable to the State or to the Federal Government d checks upon which the drawer had expressly designated to the ntrary. The defendant bank, being advised that this statute was constitutional, presented the checks at the counter of the drawee nk, demanding the full amount due and returned the checks as honored when payment in money was refused. In returning ecks which had been so presented, the Federal Reserve Bank of chmond was careful to state that the check had been duly prented and that payment in money at its face amount had been demnded but had been refused as the drawee bank claimed the right discharge its obligation by its own draft.

The plaintiffs in this proceeding sought to restrain the Federal serve Bank of Richmond, from returning any check presented der these circumstances and to require it to accept an exchange aft from the plaintiffs when any check had been thus presented them regardless where such exchange draft was payable or whether not the payment of it could be indefinitely postponed, as suggested the argument, by a succession of such exchange drafts.

The plaintiffs however in addition to the economic effect of the deral statute which forbids the payment by the Reserve Bank of a

charge for collection of checks thus forcing as they claim, all collections to be made through the Federal Reserve Banks who can thus collect without charge, made the further allegation that the defendant was undertaking to coerce the non-member banks to abandon their right to charge for remitting for collections of checks upon them by saving up checks over a consideration period of time until they reached a large amount and then demanding them at the counter with the probable effect of driving the bank into liquidation.

We need not consider this allegation which was not only denied by the defendant but which the court has found as a fact to be untrue, and the plaintiffs have taken no exception to such finding. It would be unnecessary to notice this proposition but that such conduct was condemned by Mr. Justice Holmes in the case of the American Bank and Trust Co. v. Federal Reserve Bank of Atlanta, opinion filed 16 May 1921. That decision was rendered upon a demurrer on which, of course, the court assumed that all the allegations of the bill and all reasonable inferences from them were true. The finding of fact on the trial in the present case, eliminated this question entirely from our consideration.

The record and briefs in this case are voluminous and the argument has been very elaborate and able as the importance of the case demanded.

The Federal Reserve Bank under the provisions of the Federal statute has the right to receive for collection a check drawn upon a non-member bank, or upon any other person within its district under the clear unmistakable terms of the act.

The amendment made 21 June 1917 to Sec. 13 of the Federal Reserve Act provides that no charge for the payment of the checks and drafts and the remission therefor for exchange or otherwise shall be made against the Federal Reserve Banks.

The real question therefore presented for us is whether the Legislature of N. C. can by the act above mentioned, Chap. 20 Laws 1921, interfere with this provision or regulation of the Federal corporation by a valid act of Congress by providing that a state bank need not pay its obligations in lawful money when checks, which upon their face are unconditional orders for the payment of money, are presented by Federal Reserve Banks.

The question may be presented concretely by this homely illustration. Suppose a farmer or merchant or other citizen of this State should send his check for $1,000, drawn on a bank in this State, in payment of a purchase of goods or other article, to New York. The person receiving it would place this check, in the ordinary course of business, to his credit in some bank in that city, which bank in ordinary usage would sometimes charge for collection a small sum based upon the interest for the time usually occupied in sending the check to the bank here and the return of the collection to the bank in New York. As to this charge, which is a matter between the depositor and his bank, there is no controversy here. When such check is sent to this State it has been not unusual heretofore, for the bank here to make its remittance by exchange on New York and to charge a fee for the service but since the amendment to Sec. 13 of

the Federal Reserve Bank Act of 21 June 1917, if such check from New York is remitted through the Federal Reserve Bank no charge can be made for exchange in remitting the proceeds and if the bank here should remit anything less than the face of the check, $1,000, to the Federal Reserve Bank, the Federal Reserve Bank in observance of the provisions of the above amendment to Sec. 13 will refuse to accept it as payment and notify its correspondent in New York why the check has been protested for non-payment. The plaintiffs complain that the result is that all checks will be sent for collection through the Federal Reserve Banks system but that is an economic result with which this court has nothing to do. This may or may not have been the intention of Congress in making the amendment but the Federal Reserve Bank Act has been held valid and the amendment of 1917 was a valid regulation over the corporation created by it which Congress had the power to make. Conceding that Congress cannot require the bank here to remit without charge for its trouble, Congress by forbidding the charge prevents the Reserve Bank from allowing such charge (and the total of such charges if made throughout the country would amount to $135,000,000 annually) and the Reserve Bank has no alternative except to demand payment of the face amount over the counter in legal tender from which no state can release the paying bank without violation of the U. S. Constitution, and of its obligation to the drawer and the destruction of its business by the protests of the checks of its customers.

The statute of N. C., Chapter 20, 1921, was intended for the benefit of the State banks in this State, by authorizing them to continue to charge exchange for remitting by draft or otherwise for checks sent to them thru the mails, but however desirable that policy may be, it is clearly in conflict with the valid constitutional provision of the Federal statute. No act of this State can authorize the drawee bank to pay less than the face amount of the check drawn upon it by its depositor or to remit its check in payment or pay it otherwise than in legal tender money. Nor can it require that the Federal Reserve Bank shall pay a fee or that the bank here may remit less than the face value of the check when the Federal statute forbids such charge. It is true that the Federal Reserve Bank as holder of the check has no contract rights with the drawee bank until the check is presented but as holder it can require payment of the face amount of the check in legal tender and under the act of Congress it cannot pay a deduction from that face value by accepting a remittance to the Reserve Bank of a lesser amount. The Reserve Bank always encloses with the check sent to the payee bank a stamped and addressed envelope for the check to be remitted in payment, which must be for the face amount of the check sent.

The Federal statute, being a regulation of the Federal Corporation by Congress, the act of this State authorizing the paying bank here to exact exchange is in direct conflict with the duty imposed upon the Federal Reserve Bank by the act of Congress and the Reserve Bank acts within its duty to observe the provision of the Federal

Act by refusing to receive a check for less than the face amount of the check sent by it for collection. It is true it cannot enforce payment of the face amount except by personal presentation of the check at the counter of the paying bank but it has a right to refuse a check sent to it by the paying bank for less than the full face amount and to protest the check it has sent here for collection for non-payment. The matter then becomes one between the drawer of the check and the paying bank who refuses to pay it.

The U. S. Constitution, Art. VI (Sec. 2), provides that the Constitution of the U. S. and the laws made in pursuance thereof, "shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." In the matter before us the act of Congress which provides that no exchange shall be allowed by the Reserve Bank for remitting for the collection of any check by any bank is in direct conflict with the statute of this State authorizing the paying bank to remit a lesser amount than the face amount of any check paid by it if sent to it thru the mails by the Federal Reserve Bank. In this conflict of authority, the Federal law is supreme. The injunction therefore was improvidently granted and the judgment must be

Reversed.

Adams, J., not sitting.

North Carolina, Supreme Court, Spring Term, 1922, Union County.

No. 419.

[Title omitted.]

Judgment.

This cause came on to be argued upon the transcript of the record from the Superior Court of Union County:—upon consideration whereof, this Court is of opinion that there is — error in the record and proceedings of said Superior Court.

It is, therefore, considered and adjudged by the Court here, that the opinion of the Court, as delivered by the Honorable Walter Clark, Chief Justice, be certified to the said Superior Court, to the intent that the judgment is reversed. And it is considered and adjudged further, that the plaintiff and surety to prosecution bond do pay the costs of the appeal in this Court incurred, to wit, the sum of one hundred thirty four 35/100 dollars ($134.35), and execution issue therefor.

Docket Entries.

Appeal docketed 13 May 1922; case argued 17 May 1922 (Adams, J. not sitting); opinion 24 May 1922 by Clark, C. J. Reversed; on 2 June 1922 counsel for both sides appeared in open Court and submitted the following stipulation:

"It is stipulated in the above entitled cause between the plain-
s and defendant, by their attorneys of record, as follows:
First. That the opinion and judgment or mandate of the Su-
me Court of North Carolina may not be certified down to the
perior Court of Union County in pursuance of the rules of the
preme Court of Appeals of North Carolina, pending the applica-
n of the plaintiffs for a writ of certiorari from the Supreme
urt of the United States in said cause as hereinafter stated.
Second. That the purpose of this agreement is to maintain the
tus quo in said cause pending application for a writ of certiorari,
ich the plaintiffs contemplate making to the Supreme Court of
United States, and the action of said court thereon, but it is
oressly understood, and this stipulation is made upon the condi-
n that said application for writ of certiorari shall be made to
Supreme Court of the United States at the earliest practicable
ment, as provided by the rules of said Supreme Court of the
ited States, and in the event that said application is not filed in
Clerk's office within three months from the date of this stipu-
ion, as required by the Supreme Court of the United States rule
. 37, and by the statutes of the United States, then this stipula-
n shall be null and void, and thereupon immediately after the
iration of said period of three months the said opinion and judg-
nt of the Supreme Court of North Carolina shall be forthwith
tified down to the Superior Court of Union County.
Third. The making of this stipulation shall not prejudice the
ht of the plaintiffs to apply to the Supreme Court of North Car-
na for rehearing of said judgment if so advised, but such appli-
ion shall not operate to extend the period for which this stipula-
n is made as aforesaid. (Signed) Alex W. Smith, Stack, Parker
Craig, Attorneys for Plaintiffs. M. G. Wallace, Henry W.
derson, Attorneys for Defendant.

Filed in supreme court of North Carolina June 2, 1922."

Whereupon on same day the following order was made:

"Ordered, that the agreement of the parties submitted in this
e be put upon the records as a part of proceedings and that the
inion and judgment here be retained for the time specified in the
reement or until the further order of this Court. Supreme Court
North Carolina.

By order of the Court. Stacy, J."

Petition of plaintiffs to rehear filed June 28, 1922 referred to
alker and Stacy, JJ. Copies delivered August 29, 1922; peti-
n allowed October 20, 1922; December 13, 1922 Per Curiam,
opinion, Petition to Rehear Dismissed. Stacy, J. dissenting;
lams, J. not sitting.

[Title omitted.]

Supreme Court of North Carolina, Thirteenth District.

No. 418.

[Title omitted.]

Petition to Rehear.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of North Carolina:

The plaintiffs in the above entitled action respectfully show to the Court:—

That in the Opinion and Judgment of the Court rendered on the 24th day of May, 1922, there were errors committed to the prejudice of plaintiffs in the following particulars, namely:

1. The Opinion of the Court erroneously states:—

"The plaintiffs in this proceeding sought to restrain the Federal Reserve Bank of Richmond from returning any check presented under these circumstances and to require it to accept an exchange draft from the plaintiffs when any check had been thus presented to them regardless where such exchange draft was payable or whether or not the payment of it could be indefinitely postponed as suggested in the argument, by a succession of such exchange drafts."

In the first place, the plaintiffs did not seek to restrain the Federal Reserve Bank from "returning" checks. They sought to enjoin the Federal Reserve Bank from returning as dishonored checks for which they had tendered drafts drawn on their reserve deposits as sanctioned by banking custom and Ch. 20, Laws 1921. Plaintiffs say that the Federal Reserve Banks should return any checks which they may receive drawn on plaintiffs except checks given in payment of obligations due the Government, but they object to said checks being returned "as dishonored." If the Federal Reserve Bank will merely return the checks drawn on plaintiffs same will be collected through other clearing sources and by banks which can pay exchange.

In the second place, plaintiffs have never sought to require the defendant to accept exchange drafts from plaintiffs. The defendant had threatened that it would refuse to accept the exchange drafts allowed by the Statute of North Carolina, would demand payment in money and would return the checks as dishonored when exchange drafts were tendered and payment in money refused. The plaintiffs merely sought to enjoin the defendant from carrying out this threat, namely—refusing the tender of the exchange drafts and returning the checks as dishonored. This does not mean that plaintiffs were seeking to force the defendant to accept exchange

drafts, as the defendant could refuse to accept the checks for collection or could return them if unwilling to accept exchange drafts in payment. Plaintiffs merely sought to enjoin the defendant from returning such checks as dishonored.

2. The Court erroneously holds that the plaintiffs are seeking to restrain the defendant from returning as dishonored checks for which the plaintiffs have made remittances through the mail with deduction for exchange, as shown in the following extract from the Opinion of the Court:—

"When such check is sent to this State it has been not unusual heretofore for the Bank here to make its remittance by exchange on New York and to charge a fee for the service, but since the amendment to Sec. 13 of the Federal Reserve Bank Act of 21 June 1917, if such check from New York is remitted through the Federal Reserve Bank no charge can be made for exchange in remitting the proceeds and if the Bank here should remit anything less than the face of the check, $1,000, to the Federal Reserve Bank, the Federal Reserve Bank in observance of the provisions of the above Amendment to Sec. 13 will refuse to accept it as payment and notify its correspondent in New York why the check has been protested for nonpayment."

We respectfully submit that this excerpt from the Opinion shows an entire misconception of the case. The defendant has never protested and returned checks as dishonored under the circumstances cited in the illustration used by the Court. On the contrary, the plaintiffs do not remit to the defendant for checks sent through the mail with a deduction for exchange charge, for the reason that the defendant notifies the plaintiffs when sending checks for collection that unless the plaintiffs will remit without deduction of exchange they shall return the checks. When the checks are returned the defendant does not then return the checks as dishonored, but proposes to present same over the counter, and demand payment in cash, and refuse payment in an exchange draft, and return the checks as dishonored after the plaintiffs have offered to pay the checks over their counters by means of exchange drafts at one hundred cents on the dollar.

We respectfully submit that the misconception of the case disclosed in this illustration in the Opinion is probably responsible for what we conceived to be the erroneous decision of the Court.

The Court evidently thinks that plaintiffs are seeking a mandatory injunction to compel the defendant to pay exchange charges and to accept exchange drafts for less than the amount of checks sent through the mails for collection; whereas, the purpose of the action is to enjoin the defendants from returning as dishonored checks for which plaintiffs have tendered payment in full in exchange drafts authorized by the statute of North Carolina, and impliedly authorized by the drawers of the checks. The action was not instituted to protect the right of plaintiffs to charge exchange. It was instituted to enjoin the defendant from harassing the plaintiffs and disturbing their business by returning their checks as dishonored when they had

offered to pay said checks in the medium recognized by universal banking custom and sanctioned by Sec. 2 of Chapter 20 of the Acts of 1921.

The plaintiffs realize that they cannot compel the Federal Reserve Bank to pay them exchange. The Federal Reserve Bank realizes that it cannot compel the plaintiffs to remit at par. But the Federal Reserve Bank, in order to compel the plaintiffs to do what it admitted they had a right to refrain from doing, resorted to the scheme of presenting their checks over the counter and demanding payment in cash. The carrying out of this scheme would have forced them to the wall, as no bank carries in its vaults sufficient funds to pay its checks over the counter day after day. Sec. 2 of Chapter 20, Laws of 1921, was designed to protect the State banks against this sort of warfare on the part of the Federal Reserve Bank by providing that unless the drawer of the check specified to the contrary in the face thereof the said check when presented at its counter by an agent of the Federal Reserve Bank should be payable in the usual banking medium, namely—a draft on its reserve deposits.

Upon the passage of this law, the Federal Reserve Bank threatened that if the State banks tendered an exchange draft in payment of checks so presented as allowed by the law of North Carolina the Federal Reserve Bank would return these checks as dishonored. The purpose of this action, and the sole purpose of this action was to prevent the Federal Reserve Bank from carrying out this threat and from returning as dishonored checks for which the plaintiffs had tendered drafts on their reserve deposits as allowed by the North Carolina law, said drafts being tendered for the full amount of the checks presented.

To state the matter differently, the purpose of this action was not to compel the Federal Reserve Bank to pay exchange or to accept drafts with exchange deducted, but was to enjoin the Federal Reserve Bank from returning as dishonored checks for which plaintiffs had tendered their exchange drafts in accordance with the universal banking custom and the law of North Carolina.

We respectfully submit that the Court has misconceived the purpose of the action and the right which the plaintiff seeks to protect by it. The plaintiffs did not seek and did not obtain any mandatory injunction. They sought and obtained an injunction prohibiting the defendant from publishing what was in effect a libel, namely—that they had dishonored checks which as a matter of fact they had offered to pay. It may not be out of place to call attention at this point to another apparent misconception of this Court which we will discuss at another place in this petition, namely—that the Federal Reserve Bank must handle the checks drawn on plaintiffs. The Federal Reserve Bank is under no obligation to handle the checks drawn on the plaintiff banks. If the plaintiffs demand exchange and refuse to remit at par, the Federal Reserve Bank cannot handle their checks, but it has no right on that account to resort to financial violence and wrongful coercion of plaintiffs into a surrender of a

ortant part of their revenue. All that the Federal Reserve Bank equired to do under such circumstances is to refuse to receive collection checks drawn on the plaintiffs. South Carolina is not he par list, and checks on State Banks in that State are not dled through the Federal Reserve Bank.

Then the North Carolina banks refused to remit at par and the nction of the Court prevented the Federal Reserve Bank from cing them to remit at par by demanding cash over their counters efiance of banking custom, the Federal Reserve Bank refused to dle checks on them. And all we ask is that the Federal Reserve k continue to refuse to handle our checks and let us alone. The eral Reserve Bank will let us alone if this Court sustains the inction granted by the Superior Court and forbids the Federal Ree Bank from disrupting and destroying our business by return- as dishonored checks for which we have tendered payment in ordance with universal banking custom and the law of this State.

. The Court erred in holding that Sec. 2 of Chapter 20, Laws 921, (*a*) interferes with the amendment of June 21, 1917, to . 13 of the Federal Reserve Act, and (*b*) that the said section eves State Banks from paying their obligations in lawful money, he following paragraphs of the Opinion, namely;—

The amendment made 21 June 1917 to Sec. 13 of the Federal erve Act provides: 'no charge for the payment of checks and drafts l the remission therefor for exchange or otherwise shall be made inst the Federal Reserve Banks.'

The real question, therefore, presented for us is whether the islature of North Carolina can, by the Act above mentioned, ap. 20, Laws 1921, interfere with this provision or regulation the Federal corporation by a valid Act of Congress by providing t a State bank need not pay its obligations in lawful money when cks, which upon their face are unconditional orders for the paynt of money, are presented by Federal Reserve Banks."

A. No conflict between State Statute and Federal Reserve Act.

The injunction in this case was granted under Section 2 of Chapter , Laws 1921, and not under Section 1 of that Act. Section 1 thorizes charging of exchange for remittance through the mail, ereas Section 2, under which the injunction is granted authorizes payment by draft of checks presented at the counter, unless the awer has specified to the contrary in the face thereof. We reectfully submit that Sec. 2, Chapter 20 of the Laws of 1921 does t conflict expressly or impliedly with Sec. 13 of the Federal Rerve Act as amended by the Act of June 21, 1917, for the reason at the amendment to Sec. 13 of the Federal Reserve Bank is at ost merely a limitation on the kind of checks which can be handled the Federal Reserve Banks; whereas, Sec. 2 of Chapter 20 of the ws of 1921 is merely a regulation of banking in the State of North arolina. If the effect of the Statute of North Carolina is to imess upon checks drawn on North Carolina State banks such a charter that they cannot be handled by the Federal Reserve Bank,

the result is not that the Act of North Carolina is unconstitutional but merely that the Federal Reserve Bank cannot handle the checks. Sec. 13 of the Federal Reserve Bank Act as amended is as follows:

"Sec. 13. Any Federal Reserve Bank may receive from any of its member banks, and from the United States deposits of current funds in lawful money, National bank notes, Federal Reserve notes, or checks, and drafts, payable upon presentation, and also, for collection, maturing notes and bills; or, solely for purposes of exchange or of collection, may receive from other Federal Reserve banks deposits of current funds in lawful money, National bank notes, or checks upon other Federal Reserve banks, and checks and drafts payable upon presentation within its district, and maturing notes and bills payable within its district; or, solely for the purposes of exchange or of collection, may receive from any non-member bank or trust company deposits of current funds in lawful money, National bank notes, Federal Reserve notes, checks and drafts payable upon presentation, or maturing notes and bills; provided, such non-member bank or trust company maintains with the Federal Reserve Bank of its district a balance sufficient to offset the items in transit held for its account by the Federal Reserve Bank; Provided, further, that nothing in this or any other section of this act shall be construed as prohibiting a member or non-member bank from making reasonable charges, to be determined and regulated by the Federal Reserve Board, but in no case to exceed 10 cents per $100 or fraction thereof, based on the total of checks and drafts presented at any one time for collection, or payment of checks and drafts and remission therefor by exchange or otherwise; but no such charges shall be made against the Federal Reserve banks."

We have called attention to the opinion of Attorney General Gregory, which is copied in full on pages 32 to 39 of our printed brief filed in this cause, copies of which we will file with this petition for the convenience of the Judges to whom it is addressed, and we call particular attention to the following paragraphs of that opinion:

"March 21, 1918.

"SIR: You have requested my opinion as to whether the limitations contained in section 13 of the Federal Reserve Act relating to charges for the collection and payment of checks can be held to apply to State banks which are neither members of the Federal Reserve System nor depositors in Federal Reserve Banks.

* * * * * * *

"It thus seems clear that the proviso was understood by Congress as designed to protect the clearing functions of the Federal Reserve Banks and not directed at State Banks which have no connection as members or depositors with the Federal Reserve System, and upon which it was considered the effect of the proviso could be only incidental.

may be argued and is probably true that the proviso will neces-
affect the practice of State banks, though not members or de-
, as to making charges for the payment of checks drawn upon
With the concentration of reserve balances in Federal Re-
Banks, as required by the Federal Reserve Act, the Federal
clearing system may offer the only adequate and convenient
s for clearing or collecting checks drawn upon banks at a dis-
and depositors may find it inadvisable to maintain accounts
nks upon which checks can not be cleared or collected by the
these facilities.

Federal Reserve Act, however, does not command or compel
tate Banks to forego any right they may have under the State
make charges in connection with the payment of checks
upon them. The act merely offers the clearing and collection
s of the Federal Reserve Banks upon specified conditions. If
te Banks refuse to comply with the conditions by insisting
making charges against the Federal Reserve Banks, the result
mply be, so far as the Federal Reserve Act is concerned, that
he Federal Reserve Banks cannot pay these charges they can-
ar or collect checks on banks demanding such payment from

om what has been said it follows that in my opinion the limita-
ontained in section 13 relating to charges for the collection
yment of checks do not apply to State banks not connected
e Federal Reserve System as members or depositors. Checks
ks making such charges cannot, however, (be?) cleared or
d through Federal Reserve Banks."

e this case was argued, our attention has been called to a de-
of the United States District Court for the District of Oregon
case of Brookings State Bank v. Federal Reserve Bank of San
sco, 277 Federal, 430, in which the Court holds that a State
which is not a member of the Federal Reserve System may
its customary exchange on remittances to the Reserve Bank.
ctice of the Reserve Bank to send checks on the State Bank
d by it for collection to the drawee bank indorsed "for col-
only and remittance in full without deduction for exchange."
their return unpaid to return them to its correspondents, ad-
them in effect that the checks were dishonored, was held to be
horized, and was enjoined, it appearing that such practice was
d for the purpose of coercing the State Bank. In its opinion
ourt said:

am persuaded, however, that the action of the defendant bank
opting the methods pursued by it toward the plaintiff bank,
n persistently adhering to them, indicates most convincingly
t was for the purpose of coercing the latter bank into adopting
licy of the Federal Reserve Bank to remit at par. Although
licy may be commercially sound, the plaintiff was entitled to
e its own method, without being harassed and annoyed be-
it persisted in so doing."

Brookings State Bank v. Federal Reserve Bank of San Francisco, 277 Fed. 430.

There is another reason why Sec. 2 of Chapter 20, Laws of 19[illegible] cannot possibly be said to be in conflict with sec. 13 of the Feder Reserve Act as amended. That is because Sec. 2, which authoriz payment by draft on reserve deposits, does not authorize the charg ing of exchange when checks are presented at the counter of th drawee bank, but merely authorizes the payment of such checks b means of drafts on the reserve deposits of the banks where the draw has not specified to the contrary in the face of the check. Whe checks are presented at the counter they must be paid in full. Th is our construction of the Act, and it is also the construction place upon the Act by the defendant, the Federal Reserve Bank. In it letter of February 7, 1921, commenting on the Act, the defendan said:

"A careful study of the Act will show that the Legislature in tended to make it lawful to charge exchange when remittance i made by mail, but provides that when a Federal Reserve Bank o its agent presents checks at the counter of the drawee bank, th drawee bank may, at its option, pay by draft on its corresponden instead of in cash, but does not provide for deduction of exchang under such circumstances."

See Record, p. 12.

It appears, therefore, that the amendment to Sec. 13 of the Feder Reserve Bank is not a regulation of State Banks; that the only ef fect of this amendment is to prevent the Federal Reserve Banks fro handling checks drawn on banks which charge exchange. It fur ther appears that Sec. 2 of Chap. 20, Laws of 1921, does not author ize the charging of exchange when checks are presented at th counter. And it is impossible for us to see how, under any con ceivable interpretation of the two acts, Sec. 2 of Chapter 20, La of 1921, can be said to conflict with Sec. 13 of the Federal Reser Act.

It is true that by means of the financial violence resorted to by th Federal Reserve Bank, to-wit — the demand for cash over the counte and the refusal to receive the customary medium of payment, th Federal Reserve Bank can so embarrass the State banks that it ca thereby force them to forego the charging of exchange, and it i true that Sec. 2, Chapter 20, Laws of 1921, makes this form o financial violence impossible, but it by no means follows that sa Act is therefore void. The fact that Congress gave to the Feder Reserve Bank the right to handle checks for collection, provid they could be collected at par, does not mean that Congress gave t the Federal Reserve Bank the right to use financial violence agains the State banks so as to force them to remit at par whether th were willing to do so or not. To hold that Congress, by authorizin a corporation to handle commercial paper of a certain characte thereby empowers that corporation to employ coercive measur against other corporations, over which Congress has no control, i order to compel those corporations to issue that kind of commerci paper or to forego rightful charges with respect thereto, would b a legal absurdity.

, by merely chartering a corporation and conferring upon it er to handle commercial paper, Congress thereby empowers such oration to coerce the corporations of the states to forego their tful revenues and deprives the states of their power to protect banking corporations against coercive practices, then we re- tfully submit that the powers of Congress have transcended the est imagination of the most ardent Federalist.

Does Not Relieve Banks From Paying Obligations in Lawful Money.

ec. 2, Chapter 20 of the laws of 1921 does not provide that a e bank need not pay its obligations in lawful money. Under law of North Carolina, a bank owes no obligation to the holder check. Its obligation is owing solely to its depositor.

Bank v. Bank, 118 N. C., at 786;
Perry v. Bank, 131 N. C., at 118;
Trust Co. v. Bank, 166 N. C., 119;
Consolidated Statutes, Sec. 3171.

he act in question does not provide that a Bank must pay its ositor by a check drawn on its reserve deposit. It does not pro- e that a bank can pay any check by a draft drawn on its reserve osits. It merely provides that when a check is presented by a eral Reserve Bank or its agent, it shall be so payable unless the wer has specified in the face thereof to the contrary. If, there- , the drawer of the check, who is the depositor of the bank— o is the one to whom the obligation of the bank is owing—speci- l in the face of the check that it shall not be payable in an ex- nge draft, the drawee bank must pay the check in lawful money, n if presented by a Federal Reserve Bank.

Where the depositor who draws the check does not specify to the trary, he impliedly consents that the check shall be payable by exchange draft of the bank if it is presented by a Federal Re- ve Bank or its agent; and, in such case, as the law is prospective operation, it cannot be said that the law authorizes the obligation the bank to be discharged in something other than lawful money; the obvious reason that, as existent law forms a part of every tract, the drawer of the check has impliedly consented that if check shall be presented by a federal Reserve Bank or its agent, shall be paid by means of a draft on the reserve deposits of the awee bank.

Section 2, Chapter 20, Laws of 1921, is a regulation of banking tween banks. It seems perfectly clear that the State has the right regulate clearing houses as well as banks. It would seem clear, so, that the State has a right to provide that if a bank undertakes act as a clearing house it shall accept the customary media in yment of checks which it undertakes to clear. Since the Federal eserve Banks have published their par lists they have obtained a onopoly on the clearing business; and they have no reason to com- ain when the State of North Carolina says that if they elect to

clear checks drawn on the banks in North Carolina and present these checks over the counters of our banks, said checks shall be payable in the media sanctioned by universal banking custom.

As said by the Supreme Court of the United States in the case of State Bank v. Haskell, 219 U. S. p. 70, the State may go from regulation of banking to prohibition, except upon such conditions as it may prescribe. This means that the State may enact that deposits accepted by State banks are not subject to check at all or that they are subject to check upon conditions, and upon such conditions as it may see fit to prescribe by its law. If the State can provide that deposits in State banks shall not be subject to check, certainly it can provide that checks upon the State banks when presented by a clearing house or by a Federal Reserve Bank acting as a clearing house shall be payable in the customary banking media.

The law merchant and the negotiable instruments law are not parts of the Constitution. There is no reason why the Legislature may not attach to negotiable instruments drawn on banks of this State any incidents which it may deem proper.

4. The Court erred in holding (*a*) that the sole purpose of the Act of 1921 was to authorize the State banks to continue to charge exchange for remitting by draft or otherwise for checks sent to them through the mails and (*b*) that in that respect the statute is in conflict with the Federal Reserve Act and therefore void, in the following passages of the opinion, viz:

"The statute of North Carolina, Chapter 20, 1921, was intended for the benefit of the State banks in this State, by authorizing them to continue to charge exchange for remitting by draft or otherwise for checks sent to them through the mails, but however desirable that policy may be, it is clearly in conflict with the valid constitutional provision of the Federal statute.

"Nor can it (this state) require that the Federal Reserve Bank shall pay a fee or that the bank here may remit less than the face value of the check when the Federal statute forbids such charge.

"The Federal statute, being a regulation of the Federal Corporation by Congress, the Act of this state authorizing the paying bank here to exact exchange is in direct conflict with the duty imposed upon the Federal Reserve Bank by the act of Congress and the Reserve Bank acts within its duty to observe the provisions of the Federal Act by refusing to receive a check for less than the face amount of the check sent by it for collection.

"In the matter before us the Act of Congress which provides that no exchange shall be allowed by the Reserve Bank for remitting for the collection of any check by any bank is in direct conflict with the statute of this State authorizing the payee bank to remit a lesser amount than the face amount of any check paid by it if sent to it through the mails by the Federal Reserve Bank. In this conflict of authority, the Federal Law is supreme. The injunction, therefore, was improvidently granted and the judgment must be reversed."

An examination of the foregoing passages of the opinion shows clearly that the judgment of reversal was based upon the hypothesis

the sole purpose of the statute was to enable the state banks to ge exchange on remittances to the Federal Reserve Bank and this was in contravention of Section 13 of the Federal Reserve as amended and therefore void. This is clearly the ratio deci-i of the opinion; and we respectfully submit that it is clearly g. Our position may be tersely stated as follows:

) The Federal Reserve Act does not attempt to regulate the ges of state banks not members of the Federal Reserve System, consequently no state statute regulating such charges can be to conflict with the Federal Reserve Act.

) If the State statute should be held to conflict with the Federal rve Act in that it authorizes a charge for remitting, the statute d be void only to the extent of the conflict, and the only result d be that section 1 of the act would be invalid.

) If the Court should hold section 1 invalid on account of ict with the Federal Reserve Act, the judgment of the Court v should not be reversed and the injunction dissolved for the n that no relief was granted under Section 2 of the Act.

) Section 2 of the act has a purpose entirely independent of purpose of section 1 thereof. The purpose of section 2 is not to orize the charging of exchange, but to enable the banks of this to protect themselves against financial violence by authorizing nent, as between banks, in the customary banking media, when ks are presented over their counters in such manner as to em-ass them to make payment in currency.

nese propositions have already been argued at some length under hird assignment of error of this petition and we will not repeat argument. But we do ask the Court to consider the foregoing ositions most carefully in the light of the statute itself and the ion of Attorney General Gregory heretofore quoted.

The Court erred in holding that no act of this State can au-ize the drawee bank to pay less than the face amount of the k drawn upon it by its depositor or remit its check in payment, ay it otherwise than in legal tender money, in the following ages of the opinion, viz:

No act of this State can authorize the drawee bank to pay less the face amount of the check drawn upon it by its depositor or emit its check in payment or pay it other than in legal tender ey."

t is true that the Federal Reserve Bank as holder of the check no contract rights with the drawee bank until the check is pre-ed, but as holder it can require payment of the face amount on check in legal tender.

It is true it cannot enforce payment of the face amount except personal presentation of the check at the counter of the paying k, but it has a right to refuse a check sent to it by the paying k for less than the full face amount and to protest the check it sent here for collection for non-payment."

t may be that the foregoing expressions are regarded as mere a, as the judgment is expressly based on the holding that the

statute is void because it authorizes the charging of exchange and is therefore in conflict with the Federal Reserve Act as amended. But if these expressions are to be taken as expressing the basis of the decision, then they should be examined and corrected by the Court. We respectfully submit:

(1) That this State can authorize the drawee bank to pay less than the face amount of the check drawn upon it by its depositor. If the law is prospective in operation so that it does not impair the obligation of existing contracts there is no reason why it cannot fix the charge for the service rendered by banks and designate the manner of collection of such charge.

German Alliance Ins. Co. v. Lewis, 233 U. S. 389.
State Bank v. Haskell, 219 U. S. 70.

(2) That this state can provide that unless the depositor designates in the face of the check to the contrary such check shall be payable between banks in the universal banking media, that is, a draft on the reserve deposits of the payee bank.

Such a provision is a mere regulation of banking. It is analogous to the provision that unless the depositor protests within six months after the return of his checks with statement of his account, he will not be heard to question the genuineness of a forged check returned to him. It is merely the adding of another implied provision to the many provisions implied in the contract embodied in a check, viz that if the check is presented over the counter by a Federal Reserve Bank (acting as a country clearing house) that the drawee bank shall not be embarrassed thereby but may pay the check by draft on its reserve deposits.

Such an act cannot possibly be held to violate the clause of the Constitution of the United States which provides that no state shall make anything other than gold or silver coin of the United States legal tender in payment of debts and for three reasons:

1. The debt of the bank is owing to the depositor, and the act does not authorize the bank to discharge its obligation to its depositor by an exchange draft.

2. The depositor is left the right to have his check paid in currency even to the Federal Reserve Bank provided he so designates on the face of the check. If he does not so designate, he impliedly consents that if the check comes into the hands of the Federal Reserve Bank and is presented at the counter of the drawee bank it shall be payable by draft on the reserve deposits of the bank. By accepting the check the Federal Reserve Bank impliedly assents to the same thing. If it be objected that this is technical, the answer is that the Federal Reserve Bank is resorting to a technical right in order to embarrass the State banks and thereby force them to do what they have a right to refrain from doing.

3. The act is prospective in its operation, and therefore enters into and forms a part of the contract embodied in every check drawn upon a state bank in this state.

Denny v. Bennett, 123 U. S. 489;
Abiline Bank v. Dolley, 228 U. S. 1.

f a State can prohibit commercial banks altogether, if it can pro-
t a bank's accepting deposits subject to check, if it can provide
it cannot accept deposits unless it first complies with the deposit
ranty law, why can it not provide that banks may keep a part of
r reserves on deposit in other banks and that checks, when pre-
ed by a country clearing house, shall be payable in drafts on
e reserves?

he argument that payment might be indefinitely postponed if
defeated by banks giving drafts on each other is far-fetched and
rely fanciful. If the banks of North Carolina would attempt
a practice, we had better repeal our bank law and take away
r charters. But the answer is that the banks are only authorized
ender drafts on their reserve deposits, and the defendant admits
these drafts are a safe means of payment for it offers to accept
very same drafts if the banks will agree to remit at par through
mails. But even if the objection were real instead of fanciful
not a valid objection because (1) the depositor by drawing check
r the passage of the act without specifying on its face to the con-
y impliedly authorizes the payment by draft when presented by
Federal Reserve Bank holding checks drawn against it, and (2),
Federal Reserve Bank can avoid all embarrassment by refusing
andle checks on State banks which refuse to remit at par, as it is
doing.

. The Court erred in holding that the defendant, the Federal
erve Bank, has no alternative except to demand payment of the
amount of checks over the counter in legal tender, in the
owing passage of the opinion, viz:

"Conceding that Congress cannot require the bank here to remit
hout charge for its trouble, Congress by forbidding the charge
vents the Federal Reserve Bank from allowing such charge (and
total of such charges if made throughout the country would
ount to $135,000,000 annually) and the reserve bank has no
ernative except to demand payment of the face amount over the
nter in legal tender from which no state can release the paying
k without violation of the U. S. Constitution, and of its obliga-
n to the drawer and the destruction of its business by the protests
the checks of its customers."

If the State banks refuse to remit without charging exchange and
the Federal Reserve Bank cannot pay the exchange charge, the
vious thing for the Federal Reserve Bank to do is to refuse to
eive these checks for collection. Plaintiffs in this action do not
k to require the defendant to pay exchange. They do not seek
enjoin the defendant from returning checks on plaintiffs which
y come into the hands of defendant for collection. They merely
k to restrain the defendant from returning as dishonored checks
which they have tendered the very medium of payment which
e defendant has signified that it is willing to accept if sent through
e mail without deduction of exchange. If the defendant is not
lling to pay exchange, all that the plaintiffs ask is that the defend-

ant let their checks alone. There is nothing in any law of Congress which requires the Federal Reserve Bank to handle for collection, or otherwise, checks drawn on non-member state banks, and we do not understand how it can possibly be said that the Federal Reserve Bank has no alternative except to receive checks on the non-member banks and present them for collection over the counters of the State banks, when such method of collection involves an expense which is greater than the exchange charge, when the Federal Reserve Bank derives no profit itself from the handling of the checks, when it is under no obligation to receive the checks for collection and when it can avoid all responsibility by simply refusing to handle the checks for collection just as it refuses to handle for collection checks drawn on the non-member State banks of the State of South Carolina.

7. The Court erred in not holding that plaintiffs were entitled to the injunction granted by the Court below upon general principles of equity and irrespective of the validity of the statute relied upon.

It is true that the plaintiffs did not prove that the defendant was guilty of saving up checks over a considerable period of time until they reached a large amount, and then demanding them at the counter, but the plaintiffs did prove that the defendant was presenting checks over their counters and demanding payment in cash in defiance of banking custom, for the ulterior purpose of forcing plaintiffs to remit at par. In other words, plaintiffs proved that the defendant, in defiance of the rules of good banking, was presenting checks for payment in cash at great expense to itself, not for the purpose of collecting the checks themselves but for the purpose of coercing plaintiffs into submitting to the schemes of defendant.

In the eighteenth finding of fact on page 61 of the record, Judge Webb found "that if the plans and purposes of the defendant are carried out the plaintiff banks will be deprived of the revenues derived from the service of remitting the proceeds of checks from one place to another; or else their orderly business will be so deranged by having to carry excessive cash reserves in their vaults as to diminish their lending power in their several communities and threaten their continued success and solvency."

The conduct denounced by the Supreme Court of the United States in the case of American Bank & Trust Company v. Federal Reserve Bank of Atlanta, 256 U. S. 350, included not only the accumulation of checks until they reached a large amount, but also "other devices detailed to require payment in cash in such wise as to compel plaintiffs to maintain so much cash in their vaults as to drive them out of business or force them, if able, to submit to defendant's scheme."

It is true that the Court had under consideration the wrongful practice embodied in the collection of checks and presenting them in a body for the purpose of breaking down the business of the drawee banks; but it is also true that the basis of the decision of the Supreme Court is that the presentation of checks out of the ordinary course of business for the ulterior purpose of forcing the State

anks to do that which they have a right to refrain from doing is wrong which will be enjoined by a court of equity. We respectully submit that the equitable principle which would forbid the ederal Reserve Bank from collecting checks and presenting them a body for the purpose of coercing State Banks applies with equal orce to a case where the Federal Reserve Bank presents the checks ver the counter day after day for the admitted purpose of har-assng the State banks and disorganizing their business and thereby ompelling them to relinquish a rightful source of revenue and to o that which they have a right to refrain from doing.

We ask that the Court review again the decision of the Supreme ourt of the United States in the case of American Bank & Trust ompany v. Federal Reserve Bank of Atlanta, 256 U. S. 350, 41 upreme Court Reporter, 499. We also call the attention of the ourt to the fact that the Federal District Court for the District of regon, at the time of the preparation of this petition, is trying on he merits the case of Brookings State Bank v. Federal Reserve ank of San Francisco. No report of that trial is available at the ime of the preparation of this petition except that contained in ewspaper accounts, but from the Oregon Daily Journal of Portand, under date of June 15th, we obtained the information that istrict Judge Wolverton has held that the Federal Reserve Bank s acting illegally in attempting to coerce the State Banks to remit t par. The Court said:

"Unless the reserve bank is authorized by law to coerce a nonnember bank to pay at par, when it is not remitting at par, then t is acting without authority. To my mind the crucial questions n this case have resolved themselves to the question as to whether he Federal Reserve Bank has authority under the law to coerce hese small banks to pay cash over the counter for checks."

Since the typing of this petition, the Federal District Court of Oregon has decided that case against the Federal Reserve Bank.

We assume that the decision of the District Court will be renlered by the Federal District Court of Oregon before this petition can be considered by the Court; and if so we ask leave to file a copy of the opinion in that case for consideration by the Court as persuasive authority on the point involved.

In rendering the decision in the case at bar, this Honorable Court evidently overlooked the 18th and 19th Findings of Fact on page 61 of the record.

Conclusion.

In conclusion we will say that for the reasons above set forth we think the Court committed grave error in its opinion and judgment. We ask the Court to rehear the case because we think that the decision will not only result in great hardship to our clients, in that it will allow the Federal Reserve Bank to collect up checks against them and present their checks in such a way as to disor-

ganize their business and thereby force them to relinquish a rightful source of revenue, but also that it sets a most dangerous precedent in the realm of constitutional law. The holding of this Court means that the States are powerless to protect their citizens against the aggression of a Federal corporation—that because a corporation is chartered by Congress it can do to the corporations chartered by the State what Congress itself cannot do, and that the States are powerless to protect their own creations or to regulate a business chartered and authorized under their laws because, forsooth, a Federal corporation desires to regulate such business itself by coercion and financial violence.

We have too much respect for this Court to believe that the Court intended such result, and we believe that the Court should rehear the case and give further consideration to the principles involved and the many decisions of the Supreme Court of the United States bearing thereon. We are not inadvertent to our right to present a petition to the Supreme Court of the United States to review the decision of this Court; but we feel that we owe it to the Court to present this petition and ask it to reconsider the case and correct the errors committed, as we fear that the errors of the court were caused by our own hasty presentation of the cause and the failure to stress the important principles involved.

And plaintiffs respectfully show that they have complied with the judgment of the Court and have paid the costs taxed against them, and have done all other things required to be done as prerequisite to a rehearing.

Wherefore, plaintiffs pray that this Honorable Court will rehear this case, and will order a reargument thereof, and will correct the errors in the former judgment and opinion and will affirm the judgment and decree of the Court below.

Respectfully submitted this June 24th, 1922.

ALEX W. SMITH,
STACK, PARKER & CRAIG,
Attorneys for Plaintiffs.

Certificate of Attorney on Petition to Rehear.

I, J. F. Milliken, Attorney at Law, of Monroe, North Carolina, do certify that I am and have been for more than five years a member of the bar of the Supreme Court of North Carolina; that I have no interest in the subject matter of the above entitled action; that I have not been of counsel for either party to the suit; that I have carefully examined the case and the law bearing thereon and the authorities cited in the Opinion of the Court, and I deem the decision and opinion of the Court erroneous in the following particulars:

1. It is stated in the Opinion:

"The plaintiffs in this proceeding sought to restrain the Federal Reserve Bank of Richmond from returning any check presented under these circumstances and to require it to accept an exchange draft from the plaintiffs when any check had been thus presented to

em regardless where such exchange draft was payable or whether not the payment of it could be indefinitely postponed, as suggested the argument, by a succession of such exchange drafts."

An examination of the record convinces me that the plaintiffs did t seek to restrain the Federal Reserve Bank from "returning" ecks, but merely from returning as dishonored checks for which ey had tendered drafts on their reserve deposits; and that plaintiffs d not seek to require the defendant to accept exchange drafts.

2. The Court holds in its opinion that the plaintiffs are seeking restrain the defendant from returning as dishonored checks for hich plaintiffs have made remittance through the mail with deuction for exchange, as shown in the following extract from the inion of the Court:

"When such check is sent to this state it has been not unusual herefore for the bank here to make its remittance by exchange on New ork and to charge a fee for the service, but since the amendment Sec. 13 of the Federal Reserve Bank Act of 21 June, 1917, if such heck from New York is remitted through the Federal Reserve Bank o charge can be made for exchange in remitting the proceeds and the bank here should remit anything less than the face of the heck, $1,000, to the Federal Reserve Bank, the Federal Reserve ank in observance of the provisions of the above amendment to ec. 13 will refuse to accept it as payment and notify its correondent in New York why the check has been protested for nonayment."

An examination of the record convinces me that the defendant is ot protesting and returning checks as dishonored under circumtances such as those cited in the illustration used by the Court, and hat on the contrary plaintiffs do not remit to defendant for checks ent through the mail with a deduction for exchange charge. The ecord will also show that when the checks are returned the defendnt does not then return the checks as dishonored, but proposes to resent same over the counter and demand payment in cash from laintiffs and to refuse payment in an exchange draft, and to return he checks as dishonored after plaintiffs have offered to pay same ver their counters by means of exchange drafts at one hundred ents on the dollar.

3. I am of the opinion that the Court erred in holding that Sec. 2 of Chap. 20, Laws of 1921 (*a*) interferes with the amendment of June 21, 1917, to Sec. 13 of the Federal Reserve Act, and (*b*) that he said section relieves the State banks from paying their obligaions in lawful money, in the following paragraphs of the opinion, iz:

"The amendment made 21 June 1917 to Sec. 13 of the Federal Reserve Act provides: 'No charge for the payment of checks and drafts and the remission therefor for exchange or otherwise shall be made against the Federal Reserve Banks.'

"The real question, therefore, presented for us is whether the Legislature of North Carolina can by the Act above mentioned, Chap. 20, Laws 1921, interfere with this provision or regulation of the Federal

corporation by a valid act of Congress by providing that a State bank need not pay its obligations in lawful money when checks, which upon their face are unconditional orders for the payment of money, are presented by Federal Reserve Banks."

4. I am of the opinion that the Court erred in holding (*a*) that the sole purpose of the Act of 1921 was to authorize the State banks to continue to charge exchange for remitting by draft or otherwise for checks sent to them through the mails, and (*b*) that in that respect the statute is in conflict with the Federal Reserve Act, and therefore void, in the following passages of the opinion, viz:

"The statute of North Carolina, Chapter 20, 1921, was intended for the benefit of the State banks in this State, by authorizing them to continue to charge exchange for remitting by draft or otherwise for checks sent to them through the mails, but however desirable the policy may be, it is clearly in conflict with the valid constitutional provision of the Federal statute.

"Nor can it (this state) require that the Federal Reserve Bank shall pay a fee or that the bank here may remit less than the face value of the check when the Federal statute forbids such charge."

"The Federal statute, being a regulation of the Federal Corporation by Congress, the Act of this State authorizing the paying bank here to exact exchange is in direct conflict with the duty imposed upon the Federal Reserve Bank by the Act of Congress and the Reserve Bank acts within its duty to observe the provision of the Federal Act by refusing to receive a check for less than the face amount of the check sent by it for collection.

"In the matter before us the Act of Congress, which provides that no exchange shall be allowed by the Reserve Bank for remitting for the collection of any check by any bank is in direct conflict with the statute of this State authorizing the payee bank to remit a lesser amount than the face amount of any check paid by it if sent to it through the mails by the Federal Reserve Bank. In this conflict of authority, the Federal law is supreme. The injunction, therefore, was improvidently granted, and the judgment must be Reversed."

5. I am of the opinion that the Court erred in holding that no Act of this State can authorize the drawee bank to pay less than the face amount of the check drawn upon it by its depositor or remit its check in payment or pay it otherwise than in legal tender money, in the following passages of the opinion, viz:

"No act of this State can authorize the drawee bank to pay less than the face amount of the check drawn upon it by its depositor or to remit its check in payment or pay it otherwise than in legal tender money.

"It is true that the Federal Reserve Bank as holder of the check has no contract rights with the drawee bank until the check is presented, but as holder it can require payment of the face amount of the check in legal tender.

"It is true it cannot enforce payment of the face amount except by personal presentation of the check at the counter of the paying

ank, but it has a right to refuse a check sent to it by the paying ank for less than the full face amount and to protest the check it as sent here for collection for non-payment."

6. In my opinion the Court erred in holding that the defendant, he Federal Reserve Bank, has no alternative except to demand payment of the face amount of the checks over the counter in legal ender, in the following passage of the opinion, viz:

"Conceding that Congress cannot require the bank here to remit ithout charge for its trouble, Congress by forbidding the charge revents the Federal Reserve Bank from allowing such charge (and he total of such charges if made throughout the country would mount to $135,000,000 annually) and the Reserve Bank has no lternative except to demand payment of the face amount over the ounter in legal tender from which no State can release the paying ank without violation of the U. S. Constitution, and of its obligaion to the drawer and the destruction of its business by the protests f the checks of its customers."

7. I am of the opinion that the Court erred in not holding that laintiffs were entitled to the injunction granted by Judge Webb upon general principles of equity and irrespective of the validity of he statute relied upon. I think that the plaintiffs were entitled to injunctive relief under the equitable principles declared in the case f American Bank & Trust Company v. Federal Reserve Bank of Atlanta, 256 U. S. 350.

Respectfully submitted, this 24th day of June, 1922. J. F. Milliken, Attorney at Law.

Certificate of Attorney on Petition to Rehear.

I, W. B. Love, Attorney at Law of Monroe, North Carolina, do certify that I am and have been for more than five years a member of the Bar of the Supreme Court of North Carolina; that I have no interest in the subject matter of the above entitled action; that I have not been of counsel for either party to the suit; that I have carefully examined the case and the law bearing thereon and the authorities cited in the opinion of the Court, and I deem the decision and opinion of the Court erroneous in the following particulars:

1. It is stated in the Opinion:

"The plaintiffs in this proceeding sought to restrain the Federal Reserve Bank of Richmond from returning any check presented under these circumstances and to require it to accept an exchange draft from the plaintiffs when any check had been thus presented to them regardless where such exchange draft was payable or whether or not the payment of it could be indefinitely postponed, as suggested in the argument, by a succession of such exchange drafts."

An examination of the record convinces me that the plaintiffs did not seek to restrain the Federal Reserve Bank from "returning" checks, but merely from returning as dishonored checks for which

they had tendered drafts on their reserve deposits; and that plaintiffs did not seek to require the defendant to accept exchange drafts.

2. The Court holds in its opinion that the plaintiffs are seeking to restrain the defendant from returning as dishonored checks for which plaintiffs have made remittance through the mail with deduction for exchange, as shown in the following extract from the opinion of the Court:

"When such check is sent to this state it has been not unusual heretofore for the Bank here to make its remittance by exchange on New York and to charge a fee for the service but since the amendment to Sec. 13 of the Federal Reserve Bank Act of 21 June, 1917, if such check from New York is remitted through the Federal Reserve Bank no charge can be made for exchange in remitting the proceeds and if the bank here should remit anything less than the face of the check, $1,000, to the Federal Reserve Bank, the Federal Reserve Bank in observance of the provisions of the above amendment to sec. 13 will refuse to accept it as payment and notify its correspondent in New York why the check has been protested for nonpayment."

An examination of the record convinces me that the defendant is not protesting and returning checks as dishonored under circumstances such as those cited in the illustration used by the Court and that on the contrary plaintiffs do not remit defendant for checks sent through the mail with a deduction for exchange charge. The record will also show that when the checks are returned the defendant does not then return the checks as dishonored, but proposes to present same over the counter and demand payment in cash from plaintiffs and to refuse payment in an exchange draft, and to return the checks as dishonored after plaintiffs have offered to pay same over their counters by means of exchange drafts at one hundred cents on the dollar.

3. I am of the opinion that the Court erred in holding that Sec. 2 of Chap. 20, Laws of 1921 (a) interferes with the amendment of June 21, 1917, to Sec. 13 of the Federal Reserve Act, and, (b) that the said section relieves the state banks from paying their obligations in lawful money, in the following paragraphs of the opinion, viz.:

"The amendment made 21 June 1917 to Sec. 13 of the Federal Reserve Act provides: 'No charge for the payment of checks and drafts and the remission therefor for exchange or otherwise shall be made against the Federal Reserve Banks.'

"The real question, therefore, presented for us is whether the Legislature of North Carolina can, by the act above mentioned, Chap. 20, Laws 1921, interfere with this provision or regulation of the Federal corporation by a valid Act of Congress by providing that a State Bank need not pay its obligations in lawful money when checks, which upon their face are unconditional orders for the payment of money, are presented by Federal Reserve Banks

. I am of the opinion that the Court erred in holding (a) that sole purpose of the Act of 1921 was to authorize the State banks ontinue to charge exchange for remitting by draft or otherwise checks sent to them through the mail, and, (b) that in that ect the statute is in conflict with the Federal Reserve Act, and efore void, in the following passages of the opinion, viz.:

The statute of N. C., Chapter 20, 1921, was intended for the efit of the State banks in this State, by authorizing them to conue to charge exchange for remitting by draft or otherwise for eks sent to them through the mails, but however desirable that cy may be, it is clearly in conflict with the valid constitutional vision of the Federal statute.

Nor can it (this state) require that the Federal Reserve Bank ll pay a fee or that the Bank here may remit less than the face ue of the check when the Federal Statute forbids such charge.

The Federal statute, being a regulation of the Federal Corpora- by Congress, the Act of this State authorizing the paying bank e to exact exchange is in direct conflict with the duty imposed on the Federal Reserve Bank by the Act of Congress and the erve Bank acts within its duty to observe the provision of the leral Act by refusing to receive a check for less than the face ount of the check sent by it for collection.

"In the matter before us the Act of Congress which provides that exchange shall be allowed by the Reserve Bank for remitting the collection of any check by any bank is in direct conflict h the statute of this State authorizing the payee bank to remit esser amount than the face amount of any check paid by it if sent it through the mails by the Federal Reserve Bank. In this con- t of authority, the Federal law is supreme. The injunction, refore, was improvidently granted and the judgment must be ersed."

5. I am of the opinion that the Court erred in holding that no t of this state can authorize the drawee bank to pay less than the e amount of the check drawn upon it by its depositor or remit check in payment or pay it otherwise than in legal tender money, the following passages of the opinion, viz.:

"No act of this State can authorize the drawee bank to pay less an the face amount of the check drawn upon it by its depositor or remit its check in payment or pay it otherwise than in legal nder money.

"It is true that the Federal Reserve Bank as holder of the check s no contract rights with the drawee bank until the check is prented but as holder it can require payment of the face amount on e check in legal tender.

"It is true it cannot enforce payment of the face amount except personal presentation of the check at the counter of the paying nk but it has a right to refuse a check sent to it by the paying nk for less than the full face amou[illegible] and to protest the check it s sent here for collection for non-payment."

6. In my opinion, the Court erred in holding that the defendant, e Federal Reserve Bank, has no alternative except to demand

payment of the face amount of the checks over the counter in le
tender, in the following passage of the opinion, viz:

"Conceding that Congress cannot require the bank here to re without charge for its trouble, Congress, by forbidding the char prevents the Federal Reserve Bank from allowing such charge (a the total of such charges if made throughout the country wo amount to $135,000,000 annually) and the Reserve Bank has alternative except to demand payment of the face amount over t counter in legal tender from which no State can release the p ing bank without violation of the U. S. Constitution, and of obligation to the drawer and the destruction of its business by t protests of the checks of its customers."

7. I am of the opinion that the Court erred in not holding t plaintiffs were entitled to the injunction granted by Judge We upon general principles of equity and irrespective of the validity the statute relied upon. I think that the plaintiffs were entit to injunctive relief under the equitable principles declared in case of American Bank & Trust Company v. Federal Reserve Ba of Atlanta, 256 U. S. 350.

Respectfully submitted, this 24th day of June, 1922. W. B. L Attorney-at-Law.

On outside cover sheet of this document the following is writ in ink: Petition to rehear and certificate of attorneys. The cl will present to Justices Walker and Stacy. Alex W. Smith, Sta Parker & Craig, Attorneys for Plaintiffs.

Duly considered and allowed 20 Oct., 1922. P D. Walker. P. Stacy.

Supreme Court of North Carolina, Fall Term, 1922.

#418, Union Co.

[Title omitted.]

Judgment on Rehearing.

This cause came on to be re-considered upon the petition of pl tiffs to rehear the appeal of defendant from the Superior Cour Union County, which appeal was determined at the Spring T 1922 of this Court.

Whereupon, it is adjudged that the former ruling of this C is sustained and that the petition of plaintiffs to rehear is dismis

And it is considered and adjudged further that the plain petitioners, and their sureties do pay the costs of the petition in Court incurred, to-wit, the sum of Thirty-seven 05/100 ($37 Dollars and execution issue therefor.

Clerk's Certificate.

Supreme Court of North Carolina.

I, J. L. Seawell, Clerk of the Supreme Court of North Carolina, hereby certify the foregoing to be a full, true and correct copy all proceedings in this Court in the cause entitled "Farmers & erchants Bank of Monroe, and others versus Federal Reserve Bank Richmond" as appear from originals on file in this office.

Witness my hand and seal of said Court at office in Raleigh this nuary 9th, 1923. J. L. Seawell, Clerk of the Supreme Court of orth Carolina. [Seal of the Supreme Court of the State of North rolina.]

Writ of Certiorari and Return.

[Filed Mar. 22, 1923.]

NITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

he President of the United States of America to the Honorable the Judges of the Supreme Court of the State of North Carolina, Greeting:

Being informed that there is now pending before you a suit in hich Federal Reserve Bank of Richmond, Virginia, is appellant, d Farmers and Merchants Bank et al. are appellees, which suit s removed into the said Supreme Court by virtue of an appeal om the Superior Court of Union County, State of North Carolina, d we, being willing for certain reasons that the said cause and the cord and proceedings therein should be certified by the said preme Court and removed into the Supreme Court of the United ates, Do hereby command you that you send without delay to the d Supreme Court, as aforesaid, the record and proceedings in said use, so that the said Supreme Court may act thereon as of right d according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the nited States, the twelfth day of March, in the year of our Lord one ousand nine hundred and twenty-three. Wm. R. Stansbury, erk of the Supreme Court of the United States.

[File endorsement omitted.]

Supreme Court of North Carolina.

[Title omitted.]

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States, Greetings:

Conformably to the foregoing writ of certiorari in the case of Farmers & Merchants Bank, et al., Petitioners, vs. Federal Reserve Bank of Richmond, Va., Respondents, and in obedience thereto, I respectfully submit to you the following stipulation in said cause:

"It is hereby stipulated in the above stated case that the transcript of the record therein already on file in the Supreme Court of the United States on the petition for certiorari therein, shall be taken as a return to the writ of certiorari issued out of said Court to the Supreme Court of North Carolina under date of March 12, 1923, and that the return of said writ by the Clerk of the Supreme Court of North Carolina to the Supreme Court of the United States, with a copy of this stipulation duly certified by him and attached thereto, shall be sufficient return under said writ.

This 16th day of March 1923. John J. Parker, Gillam Craig Alex.W. Smith, Solicitors for Farmers & Merchants Bank, et al., Petitioners. M. G. Wallace, Henry W. Anderson, Solicitors for Federal Reserve Bank of Richmond, Va., Respondent."

Supreme Court of North Carolina.

I, Edward C. Seawell, Clerk of the Supreme Court of North Carolina, do hereby certify the foregoing in quotation marks to be a full true and correct copy of the original stipulation filed by solicitors for Petitioners and Respondent in this office on 19 March, 1923, in the cause entitled, Farmers & Merchants Bank, et al, Petitioners, vs. Federal Reserve Bank of Richmond, Va., Respondent.

Witness my hand and seal of said Court at office in Raleigh this 20 March, 1923. Edward C. Seawell, Clerk of the Supreme Court of North Carolina. [Seal of the Supreme Court of the State of North Carolina.]

[File endorsement omitted.]

[File endorsement omitted.]

Supreme Court of the United States

October Term, 1922.

No. 823

FARMERS AND MERCHANTS BANK OF MONROE, N. C., *et al.*,
Petitioners.

vs.

FEDERAL RESERVE BANK OF RICHMOND, VIRGINIA,
Respondent.

MOTION AND PETITION TO ADVANCE.

M. G. Wallace,
H. W. Anderson,
Solicitors and Counsel
for Respondent.

H. G. Conner, Jr.,
C. W. Tillett, Jr.,
Of Counsel for Respondent.

1

Supreme Court of the United States

October Term, 1922

FARMERS AND MERCHANTS BANK OF MONROE, N. C., *et al.*, Petitioners,

against

FEDERAL RESERVE BANK OF RICHMOND, VIRGINIA, Respondent. 2

No. 823

MOTION TO ADVANCE.

SIRS:

PLEASE TAKE NOTICE that upon the annexed petition and upon the transcript of record filed herein the undersigned will move this Court at the October Term, 1922, thereof, to be held in the Capitol at the City of Washington, District of Columbia, on the 15th day of March, 1923, at the opening of Court on that day, or as soon thereafter as counsel can be heard, for an order directing
that the argument in this case be advanced and 3
that the same be set down for a day certain to be fixed by the Court.

Dated, Richmond, Va., March 13, 1923.

Yours, &c.,

M. G. WALLACE, Richmond, Va.,
H. W. ANDERSON, Richmond, Va.,
Solicitors and Counsel for Respondent.

4 H. G. Conner, Jr., Wilson, N. C.,
C. W. Tillett, Jr., Charlotte, N. C.,
Of Counsel for Respondent.

To:
John J. Parker,
100 Law Building,
Charlotte, N. C.,

Gillam Craig,
Monroe, N. C.,

Alexander W. Smith,
1111 Hurley Wright Building,
5 Washington, D. C.,
Solicitors for Petitioners.

6

SUPREME COURT OF THE UNITED STATES 7

October Term, 1922

FARMERS AND MERCHANTS BANK OF MONROE, N. C., *et al.*,
Petitioners,

against

FEDERAL RESERVE BANK OF RICHMOND, VIRGINIA,
Respondent.

No. 823

PETITION ON MOTION TO ADVANCE CASE. 8

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of the respondent, Federal Reserve Bank of Richmond, respectfully shows as follows:

I. This case comes before this Court pursuant to a writ of certiorari granted herein to review a decision of the Supreme Court of the State of North Carolina reversing a judgment of the Superior Court of Union County, North Carolina, 9
which upheld as constitutional under the Federal Constitution a certain statute of the laws of North Carolina (Chapter 20, Public Laws of North Carolina, Session of 1921) and granted an injunction against the defendant below, respondent herein.

II. The case involves the right of the Federal Reserve Bank of Richmond to collect at par within its District all checks deposited with it,

10 whether such checks are drawn upon so-called
member banks or non-member banks. The pro-
ceedings were instituted on February 9, 1921, by
a number of so-called country banks created un-
der the laws of the State of North Carolina, for
the purpose of enjoining the defendant, Federal
Reserve Bank of Richmond, from refusing to ac-
cept in payment of checks deposited with it
for collection exchange drafts drawn on the
reserve deposits of North Carolina drawee
banks in lieu of cash, as authorized by
an act of the General Assembly of the State
of North Carolina, enacted on February 5, 1921;
11 and for the purpose of enjoining the defendant,
the Federal Reserve Bank of Richmond, from
protesting for non-payment checks drawn upon
North Carolina state banks when payment was
refused by the drawee bank solely on account of
the failure or refusal of the holder to pay ex-
change charges thereon, as authorized by the said
act of the General Assembly of North Carolina.
The Superior Court of Union County issued a
temporary restraining order in accordance with
the prayer of the complaint, and from this decree
the defendant appealed to the Supreme Court of
North Carolina. That Court reversed the judg-
ment of the lower Court, holding that the afore-
12 said law of the General Assembly of North Caro-
lina was in violation of the Constitution of the
United States and void, and ordered the petition
dismissed. A rehearing was had before the Su-
preme Court of North Carolina but the North
Carolina Supreme Court reaffirmed its original
decision.

III. This case involves questions of great public interest and national importance. It presents a sharp conflict between a national policy

as declared by Congress in the Federal Reserve 13
Act and a local policy as declared by the General Assembly of North Carolina. The case is essentially a test case. Upon its determination may rest largely the policy of universal par collection, which the several Federal Reserve Banks have undertaken pursuant to the direction of Congress contained in the provisions of the Federal Reserve Act. It involves, not only the interests of the particular parties to this litigation, but the interests of the public in general. State statutes have been passed in other states somewhat similar in purpose and scope to that involved in this case. It is essential, therefore, 14
that this sharp conflict between state and federal policy created by the passage of such state legislation should be determined speedily and without delay.

Wherefore your petitioner respectfully prays that this honorable Court will grant the motion to advance this case on the calendar of this honorable Court.

Respectfully submitted,

M. G. Wallace, Richmond, Va.,
H. W. Anderson, Richmond, Va.,
Solicitors and Counsel for Respondent. 15

H. G. Conner, Jr., Wilson, N. C.,
C. W. Tillett, Jr., Charlotte, N. C.,
Of Counsel for Respondent.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 828.

FARMERS AND MERCHANTS BANK OF MONROE, N. C., ET AL., PETITIONERS,

vs.

FEDERAL RESERVE BANK OF RICHMOND, VA., RESPONDENT.

ON WRIT OF CERTIORARI TO REVIEW A JUDGMENT OF THE SUPREME COURT OF NORTH CAROLINA.

BRIEF FOR PETITIONERS.

JOHN J. PARKER,
GILLAM CRAIG,
ALEXANDER W. SMITH,
Solicitors for Petitioners.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 823.

FARMERS AND MERCHANTS BANK OF MONROE, N. C., ET AL.,

vs.

FEDERAL RESERVE BANK OF RICHMOND, VIRGINIA.

BRIEF FOR FARMERS & MERCHANTS BANK ET AL.

Statement of Facts.

This case arises under a petition for a writ of certiorari to the Supreme Court of North Carolina to review a judgment of that court interpreting section 13 of the Federal Reserve Act (sec. 13 of Act of Dec. 23, 1913, as amended March 3, 1915, ch. 93, Sept. 7, 1916, ch. 461, and June 21, 1917, ch. 32, S. 4 and 5) and holding a statute of North Carolina (chapter 20, Public Laws 1921, Tr., p. 7) to be void on the ground that it was in conflict with that act as interpreted and with the Constitution of the United States.

The questions raised on this record involve the interrelation of the two great systems of banking in the United States—the one National and the other State. These relations

have been strained for some years resulting in litigation now pending in this court (No. 717, October Term, 1922) and in the United States District courts of Kentucky and Oregon, besides the instant case. The case at bar involves directly the relative powers of the States and the Nation with respect to banks created in each jurisdiction, and the decision of the Supreme Court of North Carolina advances the paramountcy of National legislation beyond any point heretofore reached under the interpretation of the Constitution by the Supreme Court. If this advanced position is sound it should be sanctioned by the Supreme Court and made applicable in all the States. If on the other hand it is unsound, it should be corrected *in limine*. The distinction between the case at bar and the other cases referred to is due to the Statute of North Carolina under review. This statute is held to be subordinate to, and in conflict with, the Federal Reserve Act. In the other cases the Reserve Act alone is involved.

It is respectfully submitted that the questions here presented are of grave importance in avoiding conflict between State and Federal statutes and the decisions of State and Federal courts in matters affecting the internal interests of the States and the Federal Government.

The case at bar was commenced in the Superior Court of Union County, North Carolina. An injunction was sought and granted in the Superior Court under said chapter 20, Public Laws of North Carolina, Session of 1921, restraining the Federal Reserve Bank of Richmond from returning as dishonored checks for which complainant banks had tendered payment by draft on their reserve deposits as allowed by section 2 of said statute. The Supreme Court of North Carolina reversed on the ground that the statute under which it was

granted was in conflict with the act of Congress known as the Federal Reserve Act and with the Constitution of the United States. A petition to rehear was filed and granted, but upon the rehearing the petition was dismissed by a divided court. Justice Adams did not sit at either hearing and Justice Stacy dissented from the dismissal of the petition to rehear.

This is another of the "par-clearance" cases brought about by the coercive policy of the Federal Reserve banks. From time immemorial it has been customary for the banks of North Carolina to make payment of checks drawn upon them which come into the hands of banks at a distance by drafts drawn upon their reserve funds kept on deposit in banking centers, and to make a charge known as "exchange" for this service of remitting funds. The respondents in common with other Federal Reserve banks a few years ago were ordered by the Federal Reserve Board to establish a universal system of "par clearance," under which the various banks would remit for items drawn upon them without the deduction of this exchange charge. Numerous banks, including the petitioners herein, would not agree to come into this "par-clearance" system because they did not care to surrender the legitimate revenues they derived from exchange charges, and without which the country banks could hardly exist.

Failing to enlist a large number of the country banks in the par-clearance system by persuasion, respondent, in common with other Federal Reserve banks, undertook to force them into the system and put into effect "universal par-clearance." To accomplish this, they resorted to a very novel and ingenious device. Realizing that in accordance with universal banking customs the country banks kept most

of their funds on deposit in reserve centers, and that it would be impossible for them to carry in their vaults sufficient cash to pay over their counters the aggregate of checks that ordinarily came into the possession of banks at a distance, and which they were accustomed to pay with drafts on their reserve deposits, respondent served notice on the recalcitrant country banks in North Carolina, that it intended to put them on the "par list" on and after November 15, 1920, whether they consented or not; that the publication of this par list would concentrate checks drawn upon them in the hands of respondent, and that, unless they agreed to remit "at par" respondent would present these checks over the counter, would refuse to take the customary draft on reserve deposits, would demand payment in cash only. If payment in cash were refused the checks would be protested and returned to the banks' customers. Respondent realized that no country bank could afford to carry in its vaults sufficient cash to pay so large an accumulation of checks drawn upon it in cash over the counter or to havo such checks returned dishonored to its customers; that, rather than face either alternative, the country banks would be forced to agree to remit at par, even though to agree to this would mean such loss of revenues as eventually to drive many of them out of business.

The Deputy Governor of the defendant reserve bank admitted under oath that—

> "We knew at the time that we put the banks on the par list that putting them on the par list would inevitably result in bringing into the hands of the Federal Reserve Bank of Richmond practically all of the checks drawn on these banks that went out of their immediate localities" (Tr., 195).

> "Our immediate object in presenting these checks over the counter was not for the purpose of collecting the checks themselves, but for the purpose of forcing these banks to remit at par" (Tr., 197).

To protect the banks of North Carolina from this threatened oppression, and to preserve for the State the benefit of the country banking system which was being jeopardized by the Federal Reserve system's "par-clearance" scheme, the Legislature of North Carolina enacted chapter 20, Public Laws of 1921, entitled "An act to promote the solvency of State banks," section 2 of which reads as follows:

> "That in order to prevent accumulation of unnecessary amounts of currency in the vaults of the banks and trust companies chartered by this State, all checks drawn on said banks and trust companies shall, unless specified on the face thereof to the contrary by the maker or makers thereof, be payable at the option of the drawee bank, in exchange drawn on the reserve deposits of said drawee bank when any such check is presented by or through any Federal Reserve bank, postoffice, or express company, or any respective agents thereof."

Immediately upon the passage of this act respondent gave notice that it would treat the act as a nullity and would proceed with its scheme of presenting checks over the counter, refusing the customary draft on reserve deposits, and returning, as dishonored, checks for which exchange drafts on reserve deposits had been tendered, as allowed by the act. This action was then instituted to enjoin respondent from returning, as dishonored, checks for which solvent drafts on reserve deposits had been tendered, as allowed by this act.

Respondent admitted that petitioners were entitled to the writ of injunction prayed if the act was valid, but contended that the act was invalid because in conflict with the Constitution of the United States and the act of Congress known as the Federal Reserve act.

Points Raised on the Record.

Point One.

The decision complained of erroneously interprets section 13 of the Federal Reserve act as forbidding non-member and non-affiliated State banks to charge exchange for the payment of checks which had come into the hands of Federal Reserve banks.

Point Two.

Said decision erroneously interprets said section 13 of the Federal Reserve act as forbidding the Federal Reserve banks to pay exchange charges on checks which they held for collection drawn on non-member and non-affiliated State banks.

Point Three.

Said decision erroneously holds that the statute of North Carolina (ch. 20, Public Laws, 1921) is in conflict with section 13 of the Federal Reserve act as amended, and is therefore void, the gist of the decision being set forth in the following paragraphs of its opinion:

> "The amendment made 21st of June, 1917, to sec. 13 of the Federal Reserve act, provides that no charge for the payment of the checks and drafts

and the remission therefor for exchange or otherwise shall be made against the Federal Reserve banks. The real question, therefore, presented for us whether the Legislature of N. C. can by the act above mentioned, chap. 20, Public Laws, 1921, interfere with this provision or regulation of the Federal corporation by a valid act of Congress, by providing that a State bank need not pay its obligations in lawful money when checks, which upon their face are unconditional orders for the payment of money, are presented by Federal Reserve banks.

* * * * * * *

"In the matter before us the act of Congress which provides that no exchange shall be allowed by the reserve bank for remitting for the collection of any check by any bank is in direct conflict with the statute of this State authorizing the payee bank to remit a lesser amount than the face amount of any check paid by it if sent to it through the mails by the Federal Reserve bank. In this conflict of authority, the Federal law is supreme. The injunction, therefore, was improvidently granted and the judgment must be *reversed*."

Point Four.

Said decision erroneously holds (by inference) that article 1, section 10, of the Constitution of the United States prevents a State from providing that checks drawn upon a State bank, unless the drawee shall have specified to the contrary, shall be payable according to banking customs by drafts drawn on the reserve deposits of the drawee bank, and that section 2 of chapter 20, Public Laws of North Carolina, Session of 1921, is therefore void.

Point One.

THE SUPREME COURT OF NORTH CAROLINA ERRONEOUSLY INTERPRETED SECTION 13 OF THE FEDERAL RESERVE ACT AS AMENDED TO FORBID STATE BANKS TO CHARGE EXCHANGE FOR THE PAYMENT OF CHECKS WHICH HAD COME INTO THE HANDS OF THE FEDERAL RESERVE BANK.

That this is the interpretation placed upon the amendment to section 13 of the Federal Reserve Act by the Supreme Court of North Carolina clearly appears from its opinion in the record.

We respectfully submit that, although the amendment of June 21, 1917, to section 13 of the Federal Reserve Act does provide that no exchange charges shall be made against Federal Reserve banks, this is not to be interpreted as forbidding *State banks* to charge exchange for remitting for checks which have come into the possession of the Federal Reserve banks, because (*a*) Congress has no power to control the charges of State banks for services rendered by them; (*b*) the remitting of funds in payment of checks is a service which State banks cannot be compelled to render without compensation without violation of the 5th Amendment of the Federal Constitution, and (*c*) the general language of the statute must be construed as limited to banks which Congress has jurisdiction to regulate and must not be applied to banks over which Congress has no control.

Under our dual system of government certain principles of constitutional law have been developed which are so firmly established as not to be open to question. Some of these are written in the Constitution itself. Others have been declared

the courts, while still others are recognized by common
nsent.

Among these principles may be mentioned the following:

The Government of the United States is one of delegated
wers. In the exercise of these powers it acts as any other
vereign power, and is not limited in the choice of ways
d means. But it has no power save such as has been
legated to it, and any attempt to exercise powers not dele-
ted is unconstitutional. Its acts outside its constitutional
thority are invalid, even though it purports to exercise a
legated power; *e. g.*, its attempts to regulate child labor
nder the "commerce clause" and under the taxing power
ve both been declared to be unconstitutional.

The States are also sovereign, having all the power of free
nd independent nations, save (*a*) as has been delegated to
e Federal Government: (*b*) such as would hinder or im-
ede the Federal Government in the discharge of those powers
hich have been delegated to it.

Operating in the same territory and upon the same citizens,
either the Federal nor the State government will be pre-
umed to intend to encroach upon the constitutional powers
f the other nor to interfere with the other in the proper
ischarge of its functions. Where a law is enacted by one
overnment in the Union which apparently encroaches upon
he other government in the same territory it will not be con-
trued as doing so if it is susceptible of any other reasonable
nterpretation. It will be construed to be within the consti-
utional powers of the legislative body enacting it, rather
than outside those powers if such construction be reasonably
possible.

Let us apply these well-established principles to the case under consideration:

Congress, in pursuance of the fiscal powers delegated to it, has created the Federal Reserve System. The purpose of the system is to mobilize the credits of the country and create an elastic currency based on these credits. The States before the adoption of the Federal Constitution, and ever since, have had their own banking systems. The creation of State banks and their control and regulation is clearly within the reserved powers of the States. Congress has no power, and cannot be presumed to have intended, by the adoption of a Federal system of banks, to have exercised the power to interfere with, to control, or to regulate the State systems.

Beginning early in the history of the Federal Government, Congress has created, from time to time, first the United States banks, then the National Banking System, and lastly the Federal Reserve System. All these have existed side by side with the banking systems of the several States. It was held in an early decision that the States could not control or hamper the banks of the Federal Government in the discharge of the functions for which they were created. State laws applicable to State banks did not apply to them. On the other hand, Congress has not attempted to regulate or control the State banks, and laws regulating national banks have been held, uniformly, not to apply to State banks.

The Federal Reserve System consists of the Federal Reserve banks under the direct control of the Federal Reserve Board, and the member banks, *i. e.,* national banks, which are compulsory members, and such State banks as voluntarily become members. As to this system, Congress has the undoubted right to legislate. The Reserve banks and the

national banks are its own creations and subject at all times and in every respect to its will. The State banks by voluntarily joining the system submit themselves to congressional control in so far as their relation to the system is concerned and so long as they remain members thereof. But only a comparatively small number of State banks are members of the Federal Reserve System. Many have not the requisite capital and are therefore not eligible to membership. Others, though qualified, do not think it to their interest to become members. Congress cannot compel these State banks to join the system or to submit themselves to its jurisdiction. It has no power to legislate for them and should not be presumed to have undertaken to do so.

While the primary purpose of the Federal Reserve Act was to mobilize credits and provide an elastic currency, as all national banks were to be members of some one of the twelve Reserve banks and required to keep their reserves on deposit with such bank (the larger State banks having the same privilege) it was seen that the Reserve banks might conveniently and advantageously act as clearing-houses for their members, and the act so provided.

> "A clearing-house is a voluntary association of banks for the purpose of making exchanges of notes, checks, bills and moneys and settlements between the banks, *all of whom must belong to the association.*" (Italics ours.) Magee, Banks & Bkg. (2d Ed.), p. 29.

Thus instead of the member banks sending their checks on each other to some central point by messengers, and there exchanging checks and settling balances, the member banks may send these checks on other members to the Federal

Reserve bank, and that bank makes the exchange and settles the balances out of funds deposited with it by the members. This clearing-house feature necessarily applies to member banks only, but, for convenience, its privileges were extended by the amendment of September 7, 1916, to such non-member banks as might open clearing accounts and maintain balances with the Federal Reserve bank sufficient to offset the items in transit held for their account. These banks making deposits for exchange purposes are not members, and do not become members of the Federal Reserve bank or subject themselves to its jurisdiction and control. But they do become members of the clearing-house and collection agency of the Federal Reserve System and do subject themselves to the rules governing these clearing and collection functions.

Member banks do business not only with member banks, but with non-member State banks. Their customers deposit with them for credit and for collection checks on both members and non-members. The checks which they receive on members may be cleared through the clearing-house maintained by the Federal Reserve bank, just as checks on banks in the same city in which they were located may be and are cleared through the local clearing-house of which these banks are members. But checks on non-members, whether of the Federal Reserve bank clearing-house or the local clearing-house, had to be collected through some collection agency. As a matter of convenience, the Federal Reserve bank was authorized to act as such collecting agent for its members. This was entirely outside its function as a clearing-house. In so acting it was an agent pure and simple, and was responsible as such. The items which it undertook to collect were not its items but belonged to its principal. Any loss

on these items was not its loss, but that of its principal. Any expense incurred in collecting was for and on account of its principal, which was bound to reimburse the agent therefor. This right to act as collecting agent was not given in the original act but was added by amendment, experience having demonstrated its convenience and advantage to the member banks. Under the section as originally enacted only member banks and Reserve banks might be depositors in and clear through a Federal Reserve bank. Afterwards by the amendment of September 7, 1916, non-member banks were admitted to the clearing-house privileges (by opening clearing accounts and maintaining balances) and Reserve banks were authorized to collect as agents for member banks items on non-members. Then came the proviso known as the Hardwick Amendment (Act of June 21, 1917) which expressly recognized the right both of member and non-member banks to charge exchange subject to such rules as might be adopted by the Federal Reserve Board, but provided that no such charges should be made against the Federal Reserve banks. It will be observed that the Reserve banks are the *objects* of the prohibition; who are the *subjects?*

To what banks does this prohibition relate? The terms employed are "member" and "non-member" banks. Literally these terms are broad enough to cover and include all banks, no matter what their relation to the Federal Reserve System. But surely Congress was not attempting to legislate for or to control the charges of State institutions in no way connected with the Federal Reserve System; banks that received no benefits from it; that made no use of its machinery. Merely because some of their depositors' checks, through no act of theirs and against their wishes, got into the hands of

some member bank, they were not made subject to the rules of the Federal Reserve Board. These banks are the creatures of another sovereign, to whose control alone they are subject. If, therefore, there is any other reasonable interpretation of the Hardwick Amendment it should be adopted, rather than a construction under which Congress must be held to have gone outside its delegated power and attempted to legislate for institutions organized and existing by authority of the States. Is there such a reasonable construction? The clearing-house provisions of the act have been extended to non-member banks which maintain for clearing purposes deposits with the Federal Reserve banks. Congress, in the amendment, is dealing with the clearing and collection of checks. The substance of the section is concerned with clearance and collection by member and non-member banks. When it is provided that no exchange charges shall be made against Federal Reserve banks by member or non-member banks is not the reasonable interpretation that non-member referred to means the non-member with clearance privileges, with which Congress then, in that very section, is dealing? Is this not a more reasonable construction than to say that Congress intended to go outside the system over which it could properly exercise jurisdiction and legislate for State banks over which it had no control?

If this prohibition applies to State banks which have no connection whatever with the Federal Reserve System; if Congress can thus indirectly control the charges of State banks, can it not with equal right control these State banks in other respects so as to carry out any policy it or the Federal Reserve Board may think wise or expedient? And if it can control the banks, why not the customers of the banks—

indeed the whole business fabric of the State and Nation? Congress under the power of taxation and under the "Commerce clause" is already regulating and controlling many things but a little while ago thought to be within the exclusive power of the States. Are we to add to this well-nigh unlimited power a still further extension of Federal jurisdiction through the Federal Reserve Act? Can Congress under the power to regulate interstate and foreign commerce control all commercial transactions, and through its control of the Reserve system regulate all banking and financial transactions? Has State sovereignty and jurisdiction been completely destroyed?

It may be urged that while Congress has no power to control non-member State banks or to regulate their charges, it does have the right to protect the Federal Reserve banks from unjust and improper charges or demands on the part of such non-member banks. Having power to create the Reserve banks it *ex necessitate* must have power to protect them in the discharge of the functions for which they were created. But the collection of checks on State banks not members of, nor in any way connected with, the system is not one of the functions of the reserve banks. There is no necessity for these banks to handle checks on non-members at all. They can fulfill all the purposes of their creation without undertaking to act as collecting agents for their members. When they do undertake to act as such agents it is not for their own benefit, but entirely for the convenience of their principals, the member banks.

In prohibiting non-member banks from charging exchange against Federal Reserve banks, if the Hardwick Amendment can be held to have been intended to apply to

non-members who have not established clearing accounts, Congress did not protect the Federal Reserve banks. They were not enabled thereby the better to carry on their important and necessary functions. But the charges of State banks were controlled and their revenues depleted for the benefit of member banks. Did Congress intend this result? Has it the constitutional power to do this?

It is significant that nowhere in the long and comprehensive Federal Reserve Act, or in any of the acts amendatory thereof, has Congress attempted to control, regulate, or coerce the State banks in the slightest degree. From the point of view of the Federal Reserve system it may be quite desirable that all eligible banks should be members thereof, but Congress has not undertaken to compel the State banks to become members. In establishing par clearance it may be very convenient and greatly facilitate the clearing of checks if all non-member banks should open clearing accounts and maintain balances sufficient to cover their items in transit, but Congress has not compelled them to do so. The entire act recognizes that any connection which the State banks have with the system is a voluntary connection. Congress has nowhere attempted to dictate to State banks unless the Hardwick proviso be so construed. If Congress can compel State banks having no connection with the Federal Reserve System to clear their checks at par, can it not with equal propriety and with equal right compel these banks to establish clearing accounts in order that the checks may be cleared with greater facility? And why may it not require these banks to become full-fledged members of the system?

An illuminating exposition of section 13 of the Federal Reserve Act as amended is contained in the opinion of At-

orney General Gregory rendered to President Wilson on Iarch 21, 1918, vol. 31, Opinions of Attorneys General, age 245.

The reasoning of Attorney General Gregory has recently een followed by Judge Wolverton of the Federal District Court of Oregon and Judge Cochran of the Federal District Court for the Eastern District of Kentucky, in the following ases:

Brookings State Bank *vs.* Federal Reserve Bank of San Francisco, 277 Fed., 430.

Same *vs.* Same, 281 Fed., 222.

Farmers & Merchants Bank of Catlettsburg, Ky., *vs.* Federal Reserve Bank of Cleveland, decided by U. S. District Court, E. D. of Ky., Oct. 14, 1922, — Fed. Rep., p. —.

In the second hearing of the Brookings Bank case Judge Wolverton says:

> "As to the second question, the non-member banks, being without the pale of the Federal Reserve Act, have the right, if they see fit, to charge reasonable exchange on remittances. This is a right the bank may relinquish at its option, but it ought not to be coerced into doing so, or agreeing to do so, and any strategy which has for its purpose the coercion of such non-member bank to yield its legal right in this respect is unlawful, and will not be approved by the courts." 281 Fed., at 226.

This court has in effect held that the Hardwick Amendment to section 13 of the Federal Reserve Act applies to members of the Federal Reserve System and not to State

banks. In American Bank & Trust Co. *vs.* Federal Reser
Bank of Atlanta, 256 U. S., 350, Mr. Justice Holmes said:

> "An important part of the income of these sma institutions is a charge for the services rendered b them in paying checks drawn upon them at a distan and forwarded, generally by other banks, throug the mail. The charge covers the expense incurr by the paying bank and a small profit. The banks i the Federal Reserve System are forbidden to mak such charges to other banks in the system. Feder Reserve Act of December 23, 1913, c. 6, paragrap 13; 38 Stat., 263; amended March 3, 1915, c. 9 38 Stat., 958; September 7, 1916, c. 461; 39 Stat 752, and June 21, 1917, c. 32, paragraphs 4 and 40 Stat., 234, 235."

The court held that the action of a Federal Reserve ban in collecting checks and presenting them in such a way a to force the non-member State banks to surrender thei rignt to charge exchange would be enjoined by the Feder courts.

We respectfully submit, therefore, that the Supreme Cou of North Carolina erred in holding that the Hardwic Amendment to section 13 of the Federal Reserve Act appli to State banks that are neither members of nor affiliate with the clearing-house functions of the Federal Reser System, and that for that reason the statute of North Carolin (ch. 20, Public Laws, 1921), regulating the clearing o checks and charging of exchange by State banks conflict therewith and is therefore void.

Point Two.

THE SUPREME COURT OF NORTH CAROLINA ERRONEOUSLY INTERPRETED THE HARDWICK AMENDMENT TO SECTION THIRTEEN OF THE FEDERAL RESERVE ACT AS FORBIDDING FEDERAL RESERVE BANKS TO PAY EXCHANGE CHARGES ON CHECKS DRAWN ON STATE BANKS AND HELD BY THEM FOR COLLECTION.

The Supreme Court of North Carolina said in its opinion:

> "The Federal Reserve Bank of Richmond was prohibited by the Federal Reserve Act from permitting any discount to be deducted from the face amount of checks which it held for collection."

It is admitted in the record that the checks on which the State banks are allowed to charge exchange and which they are allowed to pay with drafts on their reserve deposits under the terms of the North Carolina statute are checks which are not owned by the respondent Federal Reserve bank, but are merely held by it for collection as agent for its member banks. We respectfully submit, therefore, that an exchange charge on such checks is not a charge "made against the Federal Reserve banks" within the purview of the proviso of the Hardwick Amendment.

The proviso prohibits charges for exchange against the Federal Reserve banks. Charges against member banks are not forbidden. The checks on which exchange charges are made are held by member banks. They undertake the collection of them. They pay the charges of collection, including exchange. Are they to be relieved of these charges by

turning over the checks to the Federal Reserve bank for collection? When exchange is charged by a non-member State bank the charge is made, not against the Federal Reserve bank, which is acting only as agent, but against the principal, the member bank.

Remembering that Congress has no power to legislate for State banks or to control them in their operation, is not the reasonable construction of this section (even if non-member includes all State banks and not simply non-member clearing banks) that Congress intended to protect the Federal Reserve banks against exchange or other charges on items which they owned, and had no reference to items which they were only collecting as agent for other banks?

At the time the Hardwick Amendment was under discussion in Congress the Government, through the Federal Reserve bank, was floating enormous amounts of Liberty Bonds and temporary loans. These were being placed through banks non-members as well as members, and were paid for by checks on these banks. It was to prevent charges on these checks owned or handled directly by the Federal Reserve banks for the Government, and not for the spiteful purpose of enabling the reserve banks to coerce non-member banks, that the proviso was added. There was no thought of prohibiting the State banks from charging exchange on ordinary checks collected by the Federal Reserve bank as agents for the member banks. On the contrary this right was expressly reserved to all banks. The opinion of the Attorney General already referred to gives the history of the proviso and makes this very clear.

The Hardwick Amendment therefore may be given two perfectly reasonable constructions consistent with the power

of Congress and its purpose not to regulate State banks in no way connected with the Federal Reserve system: First, "non-member banks" as used in section 13 refers to non-member banks which have established clearing accounts with a Federal Reserve bank; second, "charges by exchange or otherwise" refers to charges which a Federal Reserve bank is called on to pay on its own account, not such as it pays as agent for other banks and is authorized to charge to them. Neither of these constructions does violence to the language used. Neither of these constructions hampers or impedes the Federal Reserve banks in the discharge of those great purposes for which they were created or impairs in any degree their usefulness. Both of these interpretations relieve Congress of the charge of unnecessarily meddling with the creatures of the States and bringing them into subservience to the will of the Federal Reserve system. Both preserve the integrity of our dual system of government, each sovereign within its own sphere of operation. To adopt the other construction, *i. e.*, that "non-member banks" as used in the proviso includes State banks having no sort of connection with the Federal Reserve system, and that these banks are prohibited from charging exchange on their checks which are collected by a Federal Reserve bank as agent only, imputes to Congress a purpose of depriving the little country banks existing and operating by authority of the States of a considerable part of their revenues in the interest and for the benefit of the national and State banks which are members of the Federal Reserve system. Surely such a construction should not be adopted if the language employed and in the connection used is fairly susceptible of any other construction.

Point Three.

THE SUPREME COURT OF NORTH CAROLINA ERRONEOUSLY HELD THAT THE ANTI-PAR CLEARANCE STATUTE OF NORTH CAROLINA (CH. 20, PUBLIC LAWS, 1921) IS IN CONFLICT WITH SECTION THIRTEEN OF THE FEDERAL RESERVE ACT AS AMENDED AND IS THEREFORE VOID.

The court will note that the injunction in this case was sought and obtained restraining respondent from returning *as dishonored* checks for which petitioners had tendered checks on their reserve deposits as allowed by section 1 of the North Carolina statute. It is section one of the act which authorizes the charging of exchange for remittance in payment of checks; and, in ordering the injunction dissolved on the ground that the Statute is in conflict with the Hardwick Amendment, the Supreme Court of North Carolina necessarily held that section 2, under which the injunction was granted, and which made no provision for the charging of exchange, was rendered invalid because enacted in support of section 1, which was supposedly repugnant to the Hardwick Amendment. We shall endeavor to show, therefore, (1) that section 1 of the act is not repugnant to the Hardwick Amendment, being a mere regulation of exchange charges by State banks, and (2) that section 2, standing alone, is not repugnant to the Hardwick Amendment, being merely a provision for protecting State banks against the species of financial warfare described by the court in the Atlanta "par-clearance" case.

Section One of Act Not Repugnant.

Section 1 of the statute under consideration is as follows:

> "That for the purpose of providing for the solvency, protection, and safety of the banking institutions and trust companies chartered by this State and having their principal offices in this State, it shall be lawful for all banks and trust companies in this State to charge a fee, not in excess of one-eighth of one per cent, on remittances covering checks, the minimum fee on any remittance therefor to be ten cents."

This provision is a mere regulation of the exchange charges of State banks. Banking is a business affected with a public interest.

Morse on Banks, 13.
Noble State Bank *vs.* Haskell, 219 U. S., 104.

And the right of a State to regulate the charges of a business affected with a public interest is settled beyond question.

Munn *vs.* Illinois, 94 U. S., 13.
Reagan *vs.* Trust Co., 154 U. S., 413.
German Alliance Ins. Co. *vs.* Lewis, 233 U. S., 389.

The regulation of exchange charges contained in this section applies to State banks and to State banks alone. We have demonstrated under point one of this brief that the Hardwick Amendment to section 13 of the Federal Reserve Act, upon which respondent relies, was not intended to restrict and does not restrict the exchange charges of the State banks. Consequently there can be no conflict between section 1 of the act and the Hardwick Amendment.

The fallacy of respondent consists in assuming that it is required by section 13 of the Federal Reserve Act to handle checks for collection for its member banks and is forbidden to pay exchange in collecting them. As pointed out by Attorney General Gregory (vol. 31, Opinion of Attys. Gen., 245) and Judge Wolverton (281 Fed., 282), the Federal Reserve banks are not "required," but are "permitted," to handle for collection checks for their member banks, and if they are not allowed to pay exchange and cannot collect any particular checks without paying same, they should refuse to handle such checks. If the Federal Reserve banks will refuse to handle checks drawn on banks which charge exchange, these checks will be cleared by banks which can pay exchange.

The proposition of respondent is that because Congress has limited the powers of the Federal Reserve banks by the charter of their creation, all persons must confine their business to these limitations, so that the Federal Reserve banks can do business with them. Nay, more, respondent contends that the law of a State regulating business admittedly subject to State control is void if the effect of such regulation is to render corporations created by the State incapable of making contracts with a corporation created by Congress. If this be the law, then the only thing necessary to limit the power of the States is for Congress to create corporations with limited powers.

Section Two of Act Does Not Conflict with Act of Congress.

Section 2 of the Act of North Carolina is as follows:

> "That in order to prevent accumulation of unnecessary amounts of currency in the vaults of the banks and trust companies chartered by this State, all checks drawn on said banks and trust companies shall, unless specified on the face thereof to the contrary by the maker or makers thereof, be payable at the option of the drawee bank, in exchange drawn on the reserve deposits of said drawee bank when any such check is presented by or through any Federal Reserve bank, postoffice, or express company, or any respective agents thereof."

The court will note that this section of the act has a purpose entirely independent of section 1. The purpose of section 2 is not to authorize the charging of exchange, but to enable the State banks to protect themselves against coercion by authorizing payment, as between banks, in the customary banking media. *No provision for deduction of exchange is found in this section.* The effect of the section is to frustrate the design of Federal Reserve banks which resort to presenting checks over the counter for payment in cash only, in defiance of banking custom for the purpose of thereby embarassing State banks and forcing them to remit at par.

There is not a word of this section which could be said to authorize an exchange charge against a Federal Reserve bank, or to conflict with any provision of the Federal Reserve Act or any other Federal statute.

It is true that by means of the coercive methods resorted

to by the Federal Reserve bank, to wit, the demand for cash over the counter and the refusal to receive the customary medium of payment, the Federal Reserve bank can so embarrass the State banks that it can thereby force them to forego the charging of exchange, and it is true that section 2, chapter 20, Laws of 1921, makes this form of financial violence impossible, but it by no means follows that said act is therefore void. The fact that Congress gave to the Federal Reserve bank the right to handle checks for collection, provided they could be collected at par, does not mean that Congress gave to the Federal Reserve bank the right to use coercion against the State banks so as to force them to remit at par whether they were willing to do so or not. To hold that Congress, by authorizing a corporation to handle commercial paper of a certain character, thereby empowers that corporation to employ coercive measures against other corporations, over which Congress has no control, in order to compel those corporations to issue that kind of commercial paper or to forego rightful charges with respect thereto, is obviously unsound.

If, by merely chartering a corporation and conferring upon it power to handle commercial paper, Congress thereby empowers such corporation to coerce the corporations of the States to forego their rightful revenues and deprives the States of their power to protect their banking corporations against coercive practices, then we respectfully submit that the powers of Congress have transcended the wildest imagination of the most ardent Federalist.

It was insisted in the Supreme Court of North Carolina that section 2 of the act in question made an unreasonable classification and therefore denied the Federal Reserve banks the

equal protection of the laws. That argument was not mentioned by the North Carolina Supreme Court, but in considering the validity of section 2, we will answer the "equal-protection" argument briefly. (1) The Federal Reserve banks are a class to themselves. The act of Congress under which they are created places them in a class distinct from ordinary commercial banks. (See American Bank & Trust Company vs. Federal Reserve Bank of Atlanta, 256 U. S., 350.) (2) On account of their great size they constitute a distinct class. (3) They have undertaken the function of clearing-houses, which distinguishes them from other banks in North Carolina. (4) By this "par-clearance" campaign they had obtained a virtual monopoly of the clearing business. (5) They were the only corporations in the United States engaged in a "par-clearance" campaign. (6) They were the only corporations threatening against State banks the evil of presenting their checks over the counter and demanding payment in cash in defiance of banking usage.

> "The rules by which this contention must be tested, as is shown by repeated decisions of this court, are these: 1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis, and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety, or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be con-

ceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."

Lindsley *vs.* Gas Co., 220 U. S., 61.
Abiline Bank *vs.* Dooley, 228 U. S., 1.
German Ins. Co. *vs.* Lewis, 233 U. S., 389.
Magoun *vs.* Bank, 170 U. S., 283.

And it is well settled that the act need not cover all possible abuses, but may be aimed at the evil as it exists, and hitting it presumably where experience shows it to be most felt.

Central Lumber Co. *vs.* South Dakota, 226 U. S., 157.
Missouri, etc., Ry. Co. *vs.* May, 194 U. S., 267.
Bachtel *vs.* Wilson, 204 U. S., 36.
Keokee *vs.* Taylor, 234 U. S., 224.
Noble State Bank *vs.* Haskell, 219 U. S., 70.

Point Four.

The Supreme Court of North Carolina erroneously held (by inference) that article one section ten of the Constitution of the United States renders the act in question void.

The Supreme Court of North Carolina used the following expressions in its opinion:

> "No act of this State can authorize the drawee bank to pay less than the face amount of the check drawn upon it by its depositor or to remit its check in payment or pay it other than in legal tender money."

"It is true that the Federal Reserve bank as holder of the check has no contract rights with the drawee bank until the check is presented, but as holder it can require payment of the face amount on the check in legal tender."

"It is true it cannot enforce payment of the face amount except by personal presentation of the check at the counter of the paying bank, but it has a right to refuse a check sent to it by the paying bank for less than the full face amount and to protest the check it has sent here for collection for non-payment."

t may be that the foregoing expressions are regarded as re *dicta,* as the judgment is expressly based on the holding t the statute is void because it authorizes the charging of hange and is therefore in conflict with the Federal Reserve as amended. But if these expressions are to be taken as ressing the basis of the decision, then it should be exined and corrected by this court. We respectfully sub- :

1) That the State *can* authorize the drawee bank to pay than the face amount of the check drawn upon it by its ositor. If the law is prospective in operation, so that it s not impair the obligation of existing contracts, there is reason why it cannot fix the charge for the service dered by bank and designate the manner of collection of h charge.

German Alliance Ins. Co. *vs.* Lewis, 233 U. S., 389.
Noble State Bank *vs.* Haskell, 219 U. S., 70.

2) That the State can provide that unless the depositor ignates in the face of the check to the contrary such check

shall be payable between banks in the universal banking media, that is, a draft on the reserve deposits of the payee bank. Such a provision is a mere regulation of banking. It is analogous to the provision that unless the depositor protests within six months after the return of his checks with statement of his account he will not be heard to question the genuineness of a forged check returned to him. It is merely the adding of another implied provision to the many provisions implied in the contract embodied in a check, viz., that if the check is presented over the counter by a Federal Reserve bank (acting as a country clearing-house) that the drawee bank shall not be embarrassed thereby but may pay the check by draft on its reserve deposits.

Such an act cannot possibly be held to violate the clause of the Constitution of the United States which provides that no State shall make anything other than gold or silver coin of the United States legal tender in payment of debts and for three reasons:

1. The debt of the bank is owing to the depositor, and the act does not authorize the bank to discharge its obligation to its depositor by an exchange draft.

2. The depositor is left the right to have this check paid in currency even to the Federal Reserve bank, provided he so designates on the face of the check. If he does not so designate, he impliedly consents that if the check comes into the hands of the Federal Reserve bank and is presented at the counter of the drawee bank it shall be payable by draft on the reserve deposits of the bank. By accepting the check the Federal Reserve bank impliedly assents to the same thing.

3. The act is prospective in its operation, and therefore enters into and forms a part of the contract embodied in every check drawn upon a State bank in this State.

Denny *vs.* Bennett, 123 U. S., 489.

Abiline Bank *vs.* Dolley, 228 U. S., 1.

Interpretation of Act.

The act in question does not provide that a bank may pay its *depositor* by a check drawn on its reserve deposits. It does not provide that a bank may pay *any* check by a draft drawn on its reserve deposits. It merely provides that when a check is presented by a Federal Reserve bank or its agent it shall be so payable unless the drawer has specified in the face thereof to the contrary. If, therefore, the drawer of the check, who is the depositor of the bank, and who is the one to whom the obligation of the bank is owing, specifies in the face of the check that it shall not be payable in an exchange draft, the drawee bank must pay the check in lawful money, even if presented by a Federal Reserve bank.

Where the depositor who draws the check does not specify to the contrary, he impliedly consents that the check shall be payable by the exchange draft of the bank if it is presented by a Federal Reserve bank or its agent, and, in such case, as the law is prospective in operation, it cannot be said that the law authorizes the obligation of the bank to be discharged in something other than lawful money; for the obvious reason that, as existent law forms a part of every contract, the drawer of the check has impliedly consented that if the check shall be presented by a Federal Reserve bank or its agent it shall be paid by means of a draft on the reserve deposits of the drawee bank.

SECTION 2, CHAPTER 20, LAWS OF 1921, IS A REGULATION OF BANKING BETWEEN BANKS. It seems perfectly clear that the State has the right to regulate clearing-houses as well as banks. It would seem clear, also, that the State has a right to provide that if a bank undertakes to act as a clearing-house it shall accept the customary media in payment of checks which it undertakes to clear. Since the Federal Reserve banks have published their par lists they have obtained a monopoly of the clearing business, and they have no reason to complain when the State of North Carolina says that if they elect to clear checks drawn on the banks in North Carolina and present these checks over the counters of our banks, said checks shall be payable in the media sanctioned by universal banking custom.

As said by the Supreme Court of the United States in the case of State Bank *vs.* Haskell, 219 U. S., p. 104, the State may go from regulation of banking to prohibition, except upon such conditions as it may prescribe. This means that the State may enact that deposits accepted by State banks are not subject to check at all, or that they are subject to check upon conditions, and upon such conditions as it may see fit to prescribe by its law. If the State can provide that deposits in State banks shall not be subject to check, certainly it can provide that checks upon the State banks when presented by a clearing-house or by a Federal Reserve bank acting as a clearing-house shall be payable in the customary banking media.

The law merchant and the negotiable instruments law are not parts of the Constitution. There is no reason why the Legislature may not attach to negotiable instruments drawn on banks of this State any incidents which it may deem proper.

Debt of Bank Due Depositors.

The debt of the bank is due to the depositor and nothing in the statute attempts to authorize the bank to discharge this obligation with a draft. The bank owes no obligation to the holder of a check, and a statute providing that when a check is presented by a bank it shall be payable to such bank according to the medium universally recognized between banks is a regulation of banking and not a provision that the bank can pay its debt (which it owes to its depositors alone) by something other than gold and silver.

In Bank *vs.* Bank, 118 N. C., at 786, the court said:

> "The holder of a check cannot maintain an action against the bank upon which the check is drawn until after the acceptance of the check by the bank."
>
> Bank *vs.* Millard, 10 Wallace, 153.
> Hawes *vs.* Blackwell, 107 N. C., 196.
> Mariner *vs.* Lumber Co., 113 N. C., 52.

In Perry *vs.* Bank, 131 N. C., at 118, the court said:

> "The plaintiff has no claim upon the bank by reason of the check drawn on it by Hudson, which it has never accepted or agreed to pay (Bank *vs.* Bank, 118 N. C., 783. 51 Am. St. Rep., 753; 32 L. R. A., 712), even though there should be standing to the credit of the drawer on the books of the bank a sum more than sufficient to meet the check."

To same effect Bank *vs.* Millard, 77 U. S., 152; Trust Co. *vs.* Bank, 166 N. C., at 119; La Clede Bank *vs.* Schuler, 120 U. S., 511; Florence Mining Co. *vs.* Brown, 124 U. S., 385.

The rule laid down by these decisions has been incor-

porated in the Uniform Negotiable Instruments law and is, as we understand, now law in all but one of the States of the Union. It is expressed in the Negotiable Instruments law as follows:

> "Check Not Assignment of Funds.—A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies the check."
> N. C. Consolidated Statutes, 3171.

That Checks May Pass Out of State Makes no Difference.

Nor does it matter that the check may pass outside the State and be dealt with by those who are not citizens and residents of the State. The qualifications imposed by the act of North Carolina attach to the check itself, the moment it is brought into being, become inseparable from it, and travel with it through all its stages of existence. They are conditions subsequent, annexed to the contract as a whole by operation of law at the moment of its creation. They may affect the negotiability of the instrument under the law merchant, but that does not make them invalid. Whatever effect they may have upon the plans and purposes of others in dealings with them results from the nature imparted to them as a condition of their existence in the form they have, and not from any mandate of the law operating upon the conduct of others. All parties handling them must take them as they are or not at all.

The contract of all parties connected with the checks is governed by the law of North Carolina, the *lex loci solutionis.*

Norton on Bills and Notes, 3d Edition (page 196).
Andrews *vs.* Pond, 13 Peters, 65.

Aken *vs.* Demond, 103 Mass., 323.
Abt. *vs.* American Bank, 159 Ill., 467; 42 N. E., 856.
Minor on Conflict of Laws, page 445.

Conclusion.

If the effect of the statute is to impose such a character on the checks drawn on the State banks that it is not safe or wise for the Federal Reserve bank to handle them, the result is not that the statute is invalid, but that the Federal Reserve bank should refuse to handle the checks. In the opinion of Attorney General Gregory, heretofore cited, it is said:

> "The Federal Reserve Act, however, does not command or compel these State banks to forego any right they may have under the State laws to make charges in connection with the payment of checks drawn upon them."

It can be said with equal truth, "the Federal Reserve Act does not command or compel these State banks to forego any rights they may have under State laws to pay checks drawn upon them by drafts drawn on their reserve deposits."

The Attorney General further says:

> "From what has been said it follows that in my opinion the limitations contained in section 13 relating to charges for the collection and payment of checks do not apply to State banks not connected with the Federal Reserve System as members or depositors. *Checks on banks making such charges cannot, however, be cleared or collected through Federal Reserve banks.*"

If, as the Attorney General says, the Federal Reserve banks may refuse to handle checks on banks making exchange charges, on the same principle they may refuse to handle checks on banks which are allowed to pay their checks with drafts on their reserve deposits.

Let us emphasize this. What petitioners are seeking in this suit is not to compel the respondent Federal Reserve bank to pay exchange, but to enjoin it from financial warfare which it has adopted in defiance of universal banking custom.

All that petitioners ask is that the Federal Reserve bank let their checks alone. The law *does not require* it to handle these checks. If it will let them alone, it will run no risk of any sort in connection with them.

If the Federal Reserve bank cannot pay exchange, petitioners will pay the checks at par if presented at their counters, but they will pay in the customary banking medium, checks on their reserve deposits. The law in question permits this by providing that their checks shall be so payable unless the maker specifies to the contrary.

If the Federal Reserve banks cannot handle checks of this sort or think it dangerous to do so, let them refuse to handle checks drawn on petitioners, and checks on petitioners will then be cleared through other channels, as they are now being cleared because of the Federal Reserve banks' refusing to handle them pending this injunction. This is all that petitioners ask.

For the reasons stated, we respectfully submit that the statute of North Carolina is not in conflict with the Federal

Reserve Act, nor with the Constitution of the United States, and that the Supreme Court of North Carolina was in error in so holding.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1922.

No. 823.

FARMERS AND MERCHANTS BANK OF MONROE, N. C., ET AL., Petitioners,

vs.

FEDERAL RESERVE BANK OF RICHMOND, VA., Respondent.

On Writ of Certiorari to Review a Judgment of the Supreme Court of North Carolina.

BRIEF FOR RESPONDENT

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FEDERAL RESERVE BANK OF RICHMOND, VA., RESPONDENT.

ON WRIT OF CERTIORARI TO REVIEW A JUDGMENT OF THE SUPREME COURT OF NORTH CAROLINA.

BRIEF FOR RESPONDENT.

This is a civil action, in nature of a suit in equity originally instituted in the Superior Court of Union County, North Carolina. The complainants are the Farmers and Merchants Bank of Monroe and certain

other state banks and trust companies of that state, which sue in behalf of themselves and other state banks and trust companies similarly situated. The respondent is the Federal Reserve Bank of Richmond, being one of the twelve Federal Reserve Banks established under the act of Congress, known as the Federal Reserve Act. For convenience, and in order to conform to the terms used in the record, the petitioners before this court will hereafter be referred to as the "complainants," and the respondent as the "defendant."

The object of the suit was to obtain an injunction restraining the Federal Reserve Bank of Richmond from returning as dishonored checks drawn on and presented to the respective complainants, for which exchange drafts were tendered in payment, and also to restrain said Federal Reserve Bank of Richmond from refusing to accept such exchange drafts when tendered in payment of said checks. In effect, the purpose of the suit was to restrain and prevent the defendant bank from applying the so-called "par-clearance" system in the collection of checks drawn upon the respective complainants not members of the Federal Reserve System.

Upon the filing of the complaint, the defendant, Federal Reserve Bank of Richmond, duly appeared and filed a petition for removal of the cause to the United States District Court for the Western District of North Carolina. After a hearing the Superior Court of Union County denied the petition for removal. Thereupon a certified copy of the record was duly filed in the Clerk's Office of the District Court of the United States, as provided by the statute, and removal was effected. The complainants then appeared in the United States District Court and moved to remand upon the ground, among others, that the controversy did not involve any matter in dispute capable of being estimated in money. (Rec., p. 24.) After the hearing the United States District Court remanded the cause to the Superior Court of

North Carolina for reasons stated in the opinion of the Judge. (Rec., pps. 26-29.)

The defendant thereupon appeared and filed its answer to the complaint. (Rec., pps. 29-44.) The cause came on in due course to be heard before the Superior Court of Union County, North Carolina, and the jury for the trial of questions of fact, as provided for by the practice of that state, having been duly waived by both parties, the cause was fully heard upon the facts and the law before the judge of that Court, and submitted on February 27, 1922. The court thereupon, after stating the issues in the case, made a finding upon the facts in writing, consisting of twenty-three paragraphs (Rec., pps. 54 to 62); and by these findings it expressly absolved the Federal Reserve Bank of Richmond from any intent to commit, and from the commission of any act intended to injure the complainants and from saving up or accumulating checks drawn upon the respective complainants, as alleged in the complaint. In its conclusions upon the law, the court sustained the contention of the complainants and entered its decree of injunction against the defendant substantially in accordance with the prayer of the complaint. From this decree an appeal was taken to the Supreme Court of North Carolina, which court, after a full hearing, reversed the decree of the Superior Court of Union County, and dissolved the injunction granted by that court, holding, in effect, that the statute of the state of North Carolina relied upon by complainants was unconstitutional, as being in conflict with the provisions of the Act of Congress, known as the Federal Reserve Act, and also in conflict with certain provisions of the Constitution of the United States, as will more fully appear by reference to said opinion in the record. Thereupon the complainants filed a petition for rehearing, which was granted. Additional briefs were filed in said court, and upon consideration thereof, the court adhered to its former decision reversing the decree of

the Superior Court of Union County, North Carolina, one judge dissenting, but assigning no reason for the dissent. Thereupon, complainants filed their petition in this court for a writ of *certiorari* to review said decision, and the defendant, feeling that the public interests required a speedy and final determination of the important questions involved, joined in the prayer for a writ of *certiorari*, which was accordingly granted by this court. The case is now before this court on that writ.

STATEMENT OF CASE.

The defendant, Federal Reserve Bank of Richmond, is a banking corporation duly organized and doing business under an act of Congress, known as the Federal Reserve Act of 1913 (38 Statutes at Large, 251), and amendments thereto. It is one of twelve such banks established for the twelve Federal Reserve districts provided by said act. The Fifth Federal Reserve District, which the defendant is organized to serve, consists of the states of Maryland, Virginia, North Carolina, South Carolina, a portion of the State of West Virginia, and the District of Columbia.

The capital stock of each of said Federal Reserve Banks is owned by the commercial banks of the district in which it is located, which are or may become members of the Federal Reserve System, each of said commercial banks being required, as a condition of its membership in said system, to subscribe for an amount of the stock of the Federal Reserve Bank of the district of its location equal in par value to six per cent of its capital and surplus, one-half of said subscription being required to be paid in cash and the remainder on call of the Federal Reserve Board. All earnings of the respective Federal Reserve Banks over and above the operating expenses, a provision for certain limited surplus, and six per cent per annum upon the paid-up capital stock are payable to the Government of the United States as a franchise tax.

Banks which are or may become members of the Federal Reserve System under said Federal Reserve Act and amendments thereto (hereinafter referred to as "Member Banks") are of two classes:

(a) National Banks within each district, all of which are required by law to be members of said Federal Reserve System;

(b) State banks and trust companies having the capital required by the terms of the act and otherwise qualified for membership, which voluntarily become members of said System.

In addition to the banks having full membership in said System, as aforesaid, non-member State banks and trust companies of each district are entitled to avail themselves of the collection and clearance facilities of the Federal Reserve System, by establishing and maintaining clearance accounts and carrying appropriate balances with the Federal Reserve Bank of the District in which they are located.

Each of the Federal Reserve Banks thus established, including the defendant, is managed and controlled by a board of directors of nine members selected in the manner provided in the act, and all of said Federal Reserve Banks are under the general supervision and direction of a board, known as the Federal Reserve Board, consisting of eight members, located at Washington, the members of said board being appointed by the President by and with the consent of the Senate.

The functions of the respective Federal Reserve Banks may be divided into two general classes:

(a) Public functions, in which the respective banks act as fiscal agencies of the Government of the United States, in such matters as the distribution of Government securities, receiving Government deposits required by law to be kept in said banks, paying pub-

lic obligations on proper orders, obtaining and issuing notes which serve as currency, and similar acts of a public character relating to the fiscal operations of the Government.

(b) Commercial or private banking functions, such as acting as reserve depositories for member banks which are required by law to keep their legal reserves in the Federal Reserve Banks; the purchase in the open market, or rediscount for member banks, of commercial paper; the making of loans to member banks on approved security, the collection of checks, drafts or notes, and acting as a clearance agency for member banks and for such non-member banks as avail themselves of these facilities by establishing clearance accounts, and other similar acts relating to commercial or private banking transactions.

For the purpose of facilitating collections and the clearance of balances between the several Federal Reserve Banks, a gold fund is maintained under the control of the Federal Reserve Board, through which the daily balances of the Federal Reserve Banks of the respective districts are cleared and settled.

As will hereinafter more fully appear, the issues in this case involve directly the exercise of the commercial functions of the Federal Reserve Banks, in the clearance and collection of checks, ~~drafts and notes~~, in the discharge of which duties they exercise functions common to all commercial banks, but indirectly the determination of these issues necessarily affects the successful exercise of both the public and the commercial or private functions of said banks.

By the Federal Reserve Act and its successive amendments, the Federal Reserve Banks were authorized to receive and collect all checks payable upon presentation within their respective districts, whether drawn on member or non-member banks.

Section 16 of the Federal Reserve Act provided that checks upon member banks should be received on deposit at par. By the latest amendment of Section 13, Congress declared that no charge for the payment of any check or the remission therefor by exchange or otherwise should be made against Federal Reserve Banks.

The Federal Reserve Bank of Richmond was advised that under these provisions of the law, it became its duty to receive all checks payable upon presentation within its district, and to collect such checks if it was possible to do so, but that it could not pay to the drawee any fee or charge for remitting for such checks. It was, however, advised that if the drawee refused to remit the full face amount of such checks, it was lawful and proper for the Federal Reserve Bank of Richmond to employ reliable agents in the towns where the drawee banks did business to present such checks to the drawee banks in due course of business and receive payment in lawful money, or properly protest any such checks, which after due presentation remained unpaid, which is the proper legal method for collection of checks by all banks.

Bank of Rocky Mount vs. *Floyd*, 142 N. C. 408.

The Federal Reserve Bank of Richmond accordingly notified all non-member banks in North Carolina that it would begin on November 5, 1920, to accept checks drawn upon them. If the non-member banks so desired, these checks would be sent to the bank by mail, in order that after examining them such bank could remit the amount due either by shipment of currency at the expense and risk of the Federal Reserve Bank, or at the option of the non-member bank by such a draft as the Federal Bank of Richmond could collect within one day following its receipt. The Federal Reserve Bank of Richmond would furnish a self-addressed, stamped envelope with each letter, containing checks, so that the remittance draft or advices of the shipment of currency

could be sent to it without expense. The non-member banks were also notified that if they did not wish to make this arrangement, the Federal Reserve Bank of Richmond would have proper agents present the checks upon the teller in the usual course of business so that they could be paid, or if not paid, protested in the manner prescribed by law.

Some of the state banks and trust companies of North Carolina, including certain of the complainants in this cause, objected to remitting at par, or to make payment in cash upon the presentation of their checks, and appealed to the Legislature of the state for relief against what they conceived to be an invasion of their rights. Thereupon the Legislature passed an Act (Chapter 20, Public Laws, 1919,) entitled "An act to Promote the Solvency of State Banks." This Act is the basis of the claim of the complainants in this suit, and for the convenience of the Court will be quoted in full. It is as follows:

Section 1. That for the purpose of providing for the solvency, protection and safety of banking institutions and trust companies chartered by this state and having their principal offices in this state, it shall be lawful for all banks and trust companies in this state to charge a fee not in excess of one-eighth of one per cent, on remittances covering checks, the minimum fee on any remittance therefor to be ten cents.

Section 2. That, in order to prevent accumulation of unnecessary amounts of currency in the vaults of the banks and trust companies chartered by this state, all checks drawn on said banks and trust companies shall, unless specified on the face thereof to the contrary by the maker or makers thereof, be payable at the option of the drawee bank, in exchange drawn on the reserve deposits of said drawee bank when any such check is presented by or through any Federal Reserve Bank, post-office, or express company, or any respective agents thereof.

Section 3. That it shall be unlawful for any person, or persons, other than the maker thereof, to make, by rubber stamp or otherwise, any notation on any check drawn on any bank or trust company chartered in this state, the effect of which notation shall change or affect any condition or provision thereof, as created by this Act. That any person or persons violating this section shall be guilty of misdemeanor, and upon conviction shall pay a fine of not more than Two Hundred ($200.00) Dollars, or be imprisoned not more than thirty days.

Section 4. That all checks drawn on the banks and trust companies in this state in payment of obligations due the State of North Carolina or the Federal Government shall be exempt from the provisions of Sections 1 and 2 of this Act.

Section 5. That no officer in this state shall protest for non-payment any check or checks drawn on any bank or trust company chartered by this state, when payment is refused by the drawee bank solely on account of failure or refusal of the holder or owner thereof to pay exchange charges herein authorized; and there shall be no right of action, either in law or equity, against any bank or trust company chartered by this state, for refusal to pay any such check when such action is based alone on the ground of refusal to pay exchange or collection charges herein authorized.

Section 6. That all laws in conflict with the provisions of this Act are hereby repealed.

Section 7. That this Act shall be in full force and effect from and after its ratification.

The defendant was advised that this Act was invalid as being in violation of the Constitution and laws of the United States. It therefore notified the state banks in North Carolina that it would continue to collect checks at par in pursuance of the authority given by the Federal Reserve Act as amended, and in the event of the refusal of said banks, or any of them, to remit at par it would present the checks at the counter and demand payment

in cash, and in the event of non-payment it would be compelled to return said checks as dishonored.

Thereupon the complainants on behalf of themselves and other State banks and trust companies of North Carolina similar situated, filed their complaint in this cause, in which they set up the provision of the Act of the Legislature of North Carolina aforesaid, averred that the defendant refused to recognize or to be bound by said Act, and refused to accept in payment of the checks tendered drafts drawn on the reserve deposits of complainant banks, or to permit the deduction of exchange charges from the face amount of said checks, and that this action of the defendant would seriously impair the credit and threaten the solvency of the complainant banks. The bill prayed that the defendant be permanently restrained from carrying out its threat to refuse to except exchange drawn by plaintiffs on their reserve deposits in payment of checks presented, and to return such checks to the drawers thereof as dishonored because the complainants refused to pay the same in cash. (See Rec., pp. 2 to 7.) The only suggestion of improper conduct on the part of defendant other than refusal to recognize the provisions of said Act of the Legislature of North Carolina was contained in Section Eighth of said complaint, where it was suggested that the defendant would "save up checks" and present them as threatened in its letters attached to said bill of complaint.

In the answer of the defendant (Rec., pp. 29 to 44) it expressly denies that it had saved up, or that it was its purpose to save up, checks upon the complainants or any of them, and averred that where the complainants declined to remit in exchange at par, said checks had been and would be promptly presented at the counter of said banks for payment in cash. The answer further sets up the provisions of the Federal Reserve Act and the contention of defendant that the Act of the Legislature of North Carolina upon which complainants rely

was void as being in conflict with the Constitution and laws of the United States.

The trial court in its findings of fact in this case (Rec., pps. 60, 62), expressly found that the checks were presented as expeditiously as possible under all the circumstances "without permitting such checks to accumulate in the hands of defendant, and there was no saving up of checks drawn on the plaintiff, or either of them, by the defendant," and by section 23 of the findings (Rec., p. 62) it further found "that the acts and things done by defendant as shown herein were done and performed solely with the object and with the intent to discharge what the defendant was advised and believed to be its legal duties and obligations under the Act of Congress, and the said defendant was not actuated by any motive or purpose to cause any undue injury or loss to the plaintiff banks, or any of them." To these exceptions no exception was taken by the complainants. The Supreme Court of North Carolina, in disposing of this point, says:

> "The plaintiffs, however, in addition to the economic effect of the Federal statute which forbids the payment by the Reserve Bank of a charge for collection of checks, thus forcing, as they claim, all collection to be made through the Federal Reserve Bank, who can thus collect without charge, made the further allegation that the defendant was undertaking to coerce the non-member banks to abandon their right to charge for remitting for collections of checks upon them by saving up checks over a considerable period of time until they reached a large amount and then demanding them at the counter with the probable effect of driving the bank into liquidation.
>
> We need not consider this allegation, which was not only denied by the defendant but which the court has found as a fact to be untrue, and the plaintiffs have taken no exception to such finding. It would be unnecessary to notice this proposition, but that

such conduct was condemned by Mr. Justice Holmes in the case of *American Bank & Trust Co. v. Federal Bank of Atlanta*, opinion filed 16 May, 1921,. That decision was rendered upon a demurrer on which, of course, the court assumed that all the allegations of the bill and all reasonable inferences from them were true. The finding of fact on the trial in the present case, eliminated this question entirely from our consideration."

The case as presented to this court, therefore, presents no question as to the propriety of the conduct or methods pursued by the defendant. The sole question is one of difference as to the legal rights of the parties upon the facts found by the court below, that in discharging what it conceived to be its duties under the Federal Reserve Act in the collection of checks upon complainant banks, the defendant did not save up or accumulate checks, but acted with every consideration for the rights and convenience of the complainants, and was actuated by no motive to cause them injury or inconvenience. Upon this record all issues of fact and conduct are eliminated. The case presents clearly defined issues of law. The points thus presented may be briefly summarized as follows:

POINT I.

That under the provisions of Section 13 of the Federal Reserve Act as amended, the defendant, Federal Reserve Bank of Richmond was and is authorized and required to receive on deposit or for collection from its member banks, or solely for collection from non-member banks, any check upon any of the plaintiff banks, if such check is payable upon presentation, and to collect the same at par without allowing deduction for exchange or other charge.

POINT II.

That the Act of the Legislature of North Carolina (Chapter 20, Public Laws 1921) upon which complainants rely is

invalid in that it is in conflict with the valid Acts of Congress which are the Supreme Law of the land, and in its purpose and effect it seeks to limit and restrain a Federal Agency created by Congress in discharge of the duties and functions imposed upon it by Acts of Congress.

POINT III.

That the Act of the Legislature of North Carolina upon which complainants rely is invalid in that it violates the provisions of Article I Section 10 of the Constitution of the United States, which prohibits any state from making anything but gold and silver coin a legal tender in the payment of debts.

POINT IV.

That the Act of the Legislature of the State of North Carolina upon which complainants rely is invalid in that it seeks to deny to the defendant the equal protection of the laws, and to deprive defendant of liberty or property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

Each of the points thus presented will be discussed in the order named.

POINT I.

That under the provisions of Section 13 of the Federal Reserve Act as amended, the defendant, Federal Reserve Bank of Richmond was and is authorized and required to receive for deposit or for collection from its member banks, or solely for collection from non member banks, any check upon any of the plaintiff banks, if such check is payable upon presentation, and to collect the same at par without allowing deduction for exchange or other charge.

The discussion of this point involves a consideration and construction of the provisions of the Federal Reserve Act and amendments thereto, applicable to the issues in this case. Since it is an elementary rule that in the construction of any legislative act the conditions leading up to its enactment, and the evils sought to be remedied thereby, should be considered in arriving at the legislative intent, we conceive that a brief review of the development of our financial and banking system and the conditions prevailing at the time of the enactment of this statute, as they are presented in the record in this cause, will be helpful to the court.

1. *Historical development of the financial and banking systems leading up to the legislation involved in this case.*

Before the Revolution the various American Colonies were united by common allegiance to the Crown of Great Britain. Only British coin was then in circulation, and the Colonies had made but little progress in commercial and financial development. Internal commerce was largely carried on by barter of commodities, and in many Colonies some staple commodity was treated as the measure of value, and served in place of money. In some of the Colonies there were Colonial banks, which issued notes ~~of a limited circulation,~~ but these notes

were viewed by many with suspicion, and had little, if any, circulation beyond the neighborhood of the bank of issue.

During the War of the Revolution various states, acting as independent sovereignities, undertook to coin their own money, when metal for coinage was available, and issued bills of credit intended to circulate as money. The Continental Congress also issued large quantities of bills of credit. The close of the War of the Revolution found the Confederation victorious in battle, but bankrupt in financial resources and flooded with various forms of worthless paper currency. In an effort to establish credit and to foster home industries various states resorted to many different forms of regulation and taxation of commerce between themselves and other states. The demoralized conditions resulting from these varying regulations, and lack of uniformity and stability in the financial and monetary systems of the country were among the chief reasons for calling a convention to frame a plan for a more perfect union, which resulted in the adoption of the Constitution of the United States.

One of the chief powers granted by the Federal Constitution was the power to regulate commerce between the several states and with foreign nations and Indian tribes. The framers of the Constitution apparently realized that a uniform regulation of commerce would prove ineffectual unless there was likewise a uniform medium of exchange and measure of value, for there can be no stable commercial relations unless both buyer and seller know what the one will be required to pay and the other required to receive. Therefore, in order to carry out one of the basic purposes for which the Constitution was adopted, the framers of that instrument bestowed upon Congress, and upon Congress alone, the power to coin money and to regulate the value thereof. prohibited any state from emitting bills of credit—that is to say, notes intended to circulate as money; provided

that no state should make anything legal tender for debts, except gold or silver, and that no state should pass any law impairing the obligation of a contract; and gave to Congress power to enact uniform laws concerning bankruptcy. The combined purposes of these provisions evidently was that there should be an uniform commercial system, that there should be one money for all the states, and that any person having any debt due to him anywhere within the United States might know that his right to collect this debt might not be taken away, except by National law, and the monetary medium in which the debt should be discharged would be the same, regardless of where or by whom it was payable.

Then, as now, there was not a sufficient stock of bullion in the country to make possible the use of coin as the sole medium of exchange. The difficulty of transporting coin made it a most inconvenient medium for use in ordinary transactions. Therefore, early in the history of the United States the need was realized for some form of paper currency, but students of finance clearly perceived that in order to attain one of the main purposes of the Constitution this paper currency must be issued under Federal authority and be, like metallic money, of uniform value throughout the country.

One of the first important acts of the Federal Government was the organization of the Bank of the United States, having power to issue notes redeemable at any of its branches scattered through the various states. This afforded a paper currency redeemable in lawful money, without discount and without delay, and the adjustment of accounts betwleen the branches of the Bank of the United States reduced to a minimum the necessity of transporting actual coin from place to place. The first Bank of the United States appears to have served its purpose so well that shortly after its charter expired it was seen, and emphasized by experience in the War of 1812), that the country could not dispense with the services which this bank had rendered, and the charter of

the second Bank of the United States was granted by a Congress which was then controlled by the Democratic-Republican party, even though many of the leaders of this party had at the beginning questioned the authority of the Federal Government to create National banks.

The second Bank of the United States (whether by reason of abuse of power by its officers or on account of political agitation it is unnecessary here to consider) incurred the opposition of many of the leading people of the country. In the great cases of *Osborne* v. *Bank* and *McCullock* v. *Maryland*, Chief Justice Marshall sustained the power of Congress to charter a bank, and in the course of his opinion in those cases traced the reasons for the existence of a National bank, showing that it was a most convenient, if not an absolutely necessary agency by which Congress might carry out many of the important functions entrusted to it—not the least of which was its control over the monetary system of the Nation.

Opposition to the bank continued, and finally President Jackson diverted from it the deposits of Government money. The withdrawal of this support rendered its successful operation impossible.

The fall of the second National bank left the currency system of the country to the control of state institutions, in fact if not in law. As stated above, actual coin, because of its scarcity and bulk, could not be used in daily transactions among the public at large, and, therefore, the people of the country had of necessity to rely upon bank notes issued by various state banks. This situation defeated in spirit, if not in letter, the provisions of the Constitution and left each state with a currency issued by local State banks, which generally would not circulate beyond the borders of the state, or if it could be passed at all outside of the locality, was subject to severe fluctuation and discount. It is interesting to observe that many able students of the Constitu-

tion held that the provision in the Constitution, which forbade the states to emit bills of credit, by necessary implication prohibited the incorporation by the state of a bank of issue, and this was thought to be especially true if the state attempted in any way, directly or indirectly, to lend its own credit to such notes.

In the case of *Briscoe* v. *Bank*, 11 Peters 257, the majority of the court sustained the right of a state to authorize a corporation created by it to issue notes intended to circulate as money, but in upholding this right the court was careful to point out that in so doing the bank is serving a private and not a public purpose, and its notes are merely the obligation of the corporation which issued them, and, therefore, cannot have the legal quality of money. In this case Justice Story delivered a dissenting opinion, holding that the issuance by a bank in which a state was interested, either as a stockholder or as an incorporator, of notes intended to circulate as money, was a violation of the constitutional prohibition against the emission of bills of credit. In his opinion Mr. Justice Story states that Chief Justice Marshall concurred in the views therein expressed. This dissenting opinion shows how strongly the foremost expounders of our Constitution felt that the intent of that instrument was to provide for a currency system which should be National rather than local, and that anything which might, directly, or indirectly, interfere with such a result was in conflict with the Constitution.

During the period between the administration of Andrew Jackson and the War Between the States the number of State banks of issue greatly multiplied and their notes became the currency of the country. There were, therefore, two distinct media of exchange issued under different authority—that is, State bank notes, which circulated at par only in the state or immediate vicinity of the bank which issued them; and coin issued by the United States, which was the lawful money of the

country, but which, from its nature, was inconvenient in daily and general use.

It was largely as a result of these conditions that the custom of charging exchange for remittances in payment of checks was developed. The transportation of coin from one section of the country to another was slow and expensive. Shipment of bank notes was impracticable, for the reason that notes current in one state would not pass in another, or if they would pass at all it was only at a discount varying with the distance from and reputation of the bank of issue. If, therefore, a merchant in an outlying district desired to remit for a debt due in New York, he could not send currency which was in ordinary circulation in his own community. He was compelled to ship either gold or silver, submitting to the delay, loss of interest and expense incident to the transportation then prevailing and the possibility of robbery and considerable loss in abrasion; or to effect a remittance by purchasing a bank draft payable in New York. He was, therefore, compelled to go to his local bank, turn in bank notes, and with them purchase a draft drawn by this bank on some correspondent in New York, and send this draft in settlement of his debt. To meet the demand for such remittances, the banks maintained accounts with other banks in commercial centers. Under normal laws of trade the balance of exchange varied with the seasons of the year and the commercial conditions prevailing. Outlying banks would at certain seasons have a balance in their favor, and at other seasons the balance would be against them. These balances were adjusted by loans or by shipments of coin to cover the balances as in the case of international exchange.

Under conditions of transportation and communication then prevailing, balances maintained for the purposes aforesaid in distant banks and commercial centers could not be carried as a part of a bank reserve, since

it might be weeks before such funds could be made available in event of an emergency. A bank's reserves were, therefore, kept in its own vaults and the balances maintained in other centers were regarded as investments, against which drafts could be drawn and sold as demanded. Under conditions then prevailing, the maintenance of these balances in distant cities involved considerable loss and expense to the outlying banks. They were deprived of the use of these funds save for exchange purposes, and were compelled to transfer coin—the only money of general circulation—at heavy cost and risk, with a loss of interest and loss by abrasion while in transit. These and other items of loss and expense were necessary for the maintenance of balances against which drafts could be drawn, and it was but right that the local banks should demand a premium when selling their exchange drafts.

If a customer of a local bank instead of purchasing a draft from his bank upon its exchange balances and sending the same in payment of his debt due in a commercial center as indicated above, elected to send his own check on funds on deposit with his local bank, the result to the bank was exactly the same. The check was deposited by the payee with his bank in the commercial center for collection, and was sent in due course directly or through correspondent banks to the drawee bank for payment. That bank was then required either to send its exchange draft on its central deposits in settlement, or to remit coin. A proper and reasonable charge to cover this service and the loss and expense incident thereto under the prevailing conditions was entirely legitimate.

It is obvious that these exchange charges constituted a heavy burden upon the commerce of the country, but they were a necessary consequence of the imperfect currency system and the primitive means of transportation and communication which existed at that time.

As a result of the revolution in the methods of transportation and communication during the latter half of the Nineteenth century, there was a profound change in the political and economic development of the country, which was reflected in the national policy with respect to our currency and financial system. The conditions arising out of the war emphasized the necessity for returning to the original plan of the framers of the Constitution, and giving to the entire country a single uniform system of coinage and currency. Under the national banking act adopted during the War Between the States, the national banks were authorized to issue notes based upon United States bonds, and these notes were made receivable at par by the national banks and for all public dues except duties upon imports, and redeemable in lawful money at the Treasury of the United States, The Federal government had itself during the war issued circulating notes commonly called "Green Backs," which notes were by law made legal tender for debts. The Supreme Court of the United States sustained the right of Congress to make these notes legal tender in the Legal Tender Cases, 110 U. S. 421 and 12 Wall. 457, resting its decision partly upon the ground that the framers of the Constitution intended that Congress should regulate the monetary system of the country, and this necessarily implied the power in Congress to authorize the issue of paper money as well as specie. This gave to the country two classes of currency of universal circulation, namely, the Treasury Notes or "Green Backs" issued by the Government and National Bank notes issued by the National Banks under authority of the United States. A tax was laid upon the issue of notes by State banks, which practically prohibited the issue and circulation of such notes, and this tax was sustained by the Supreme Court in the case of *Veazie Bank* vs. *Fenno*, 8 Wall. 533.

The result of these various measures was to give to

the country an uniform system of national paper currency. The Supreme Court of the United States has recognized that this was the purpose of the national banking act and kindred acts referred to, in various cases, among others the case of *Talbot* vs. *Silver Bow County*, 139 U. S. 438, where the court said:

> "These various provisions, scattered through the entire body of the statutes respecting national banks, emphasize that which the character of the system implies an intent to create a national banking system co-extensive with the territorial limits of the United States, and with uniform operation within those limits to establish everywhere throughout the United States and furnish a currency of uniform value, the same in Arizona as in New York, in Territory as in State."

The establishment of a uniform system of paper currency which upon the resumption by the treasury of specie payment became receivable at par as the equivalent of gold and silver throughout the country, in connection with the rapid development of means of transportation and communication by railroad and telegraph gradually accomplished a complete transformation in the method of handling commercial and financial transactions and the conditions controlling the same. It eliminated the necessity for the shipment of coin, since paper money could be used in the payment of debts, and could be transported with greater convenience at less cost. It greatly reduced the necessity for shipments of currency, since transfers of credit could be promptly made by telegraph, and where shipments of currency were necessary the cost thereof was reduced, and the movement greatly facilitated.

As a consequence of these conditions it became possible for the outlying banks to keep large portions of their reserve in their correspondent banks in commercial centers and reserve cities, since these could be made

promptly available in an emergency, instead of keeping these reserves in their vaults. The reserve deposits so maintained thus became a source of profit to the banks, since the depositing banks were allowed interest thereon; and could be also used as a basis for exchange transactions. The system gradually developed to a point that banks were allowed to carry as a part of their reserve, not only the actual sums on deposit at commercial or reserve centers, but also checks forwarded to such reserve banks for deposit from the date on which the same were forwarded. This was obviously unsound banking, since it permitted a bank to carry as reserve checks in float and choses in action against other banks, but it greatly facilitated banking transactions and operated to the advantage of the outlying banks. This system of reserves continued until the enactment of the Federal Reserve Act in 1913, and still prevails to some extent among banks not members of the Federal Reserve System.

These conditions also led to an enormous development in the use of personal checks in the payment of distant obligations, instead of purchase of bank drafts for exchange. The depositor in a local bank maintained a checking account and sent his own personal check upon this account to a distant city in payment of his obligations, instead of purchasing a draft from his bank and forwarding the same in discharge of such obligations.

The increasing and universal use of such personal checks led to the necessity for the development of some system for the collection of same by the banks in which they might be deposited. Usually a bank in one center would arrange with a correspondent bank in another center to collect checks on banks in the community which such correspondent bank regularly served. As between the banks in the commercial centers, these checks were usually credited at par. In the normal run of business the clearings between centers were approximately bal-

anced except during periods of seasonal fluctuation, at which time adverse balances were discharged by shipments of currency or the negotiation of temporary loans. When checks were sent by city correspondents to country banks for payment they were paid by draft by the country bank on its reserve deposit with its city correspondent. The country banks maintained their balances with the city correspondent by sending in for collection checks on various parts of the country deposited with such country banks, which checks were usually collected by city correspondents at par, and the proceeds carried as part of the reserve of the country bank.

It will be observed that the conditions out of which arose the necessity for exchange charges in the early history of the country had now been largely eliminated by the establishment of an universal system of national currency, and by improvements in methods of transportation and communication. Yet the outlying banks continued in many instances to make charges of exchange for remittances in payment of checks.

This method of collecting checks led to a system of indirect routing, which resulted in considerable loss and inconvenience to the commercial interests of the country. It is obviously to the interest of the business community that checks should be collected as promptly as possible, since the owner of the funds represented by the check may lose the interest on such funds during the period of collection or float, and the risk of loss is increased by the delay. In fact, the law of negotiable instruments requires that the holder of the check must present the same for payment as speedily as possible or take the consequence of releasing the drawer or endorser thereof. The method of collecting checks through correspondents established by various banks throughout the country led to the indirect routing of these checks from the bank of original deposit by the payee thereof to the bank of collection.

In an effort to eliminate these conditions as far as practicable, and to relieve the commerce of the country of the enormous burden of exchange charges, the banks gradually developed a system of clearing house associations through which checks were cleared among the members of such clearing house associations at par, making necessary only the settlement of debit balances. These clearing house associations were originally confined to the commercial centers, but they were gradually extended in some sections of the country to embrace the country districts served by the banks of such centers. These country clearing house associations differed from the original organizations in the commercial centers, in that they did not effect exchanges only between their own members, but undertook to collect on behalf of member banks checks upon all banks within a prescribed radius. The best known examples of these were the country clearing house associations of Boston and Kansas City, but the system was being extended to other sections of the country at the time the Federal Reserve Banks were authorized to act as clearing houses for their members and took over the functions of these organizations.

These associations could, however, in the nature of things, only operate in a limited area, and as to the great bulk of the country the method of collection through correspondents and indirect routing which has been outlined, with charges of exchange for remittances in payment of checks by country banks continued in vogue.

Such, in a general way, were the conditions which prevailed at the time of the enactment of the Federal Reserve Act of 1913.

Some of the purposes sought to be attained and the results secured by that act may be briefly summarized as follows:

(a) The national currency system was greatly

broadened and made capable of ready expansion or contraction in response to the commercial needs and financial requirements of the country.

(b) The conditions as to banking reserves of the country were greatly improved by the elimination of fictitious reserves represented by checks in transit to reserve deposits and the concentration of banking reserves in the Federal Reserve Banks where they could be immediately and effectively used in event of an emergency.

(c) It provided a means of eliminating the waste, delay and loss incident to the indirect routing of checks for collection by providing for the clearing of checks on or for all banks through one channel.

(d) It eliminated the necessity for the maintenance by banks of enormous deposits in commercial centers to protect check collections on them, since it contemplated that all checks ~~for collection~~ should be presented through the Federal Reserve Bank of the district in which the reserve deposits of such banks are kept. It gave to local banks in the country districts, which had heretofore been dependent upon their correspondents for the collection of checks on other sections upon such terms as said correspondents might impose, the benefit of an universal par collection system through the Federal Reserve Banks, and thus eliminated the reason and necessity for exchange charges, and relieved the business interests of the small towns and rural communities of the heavy burden imposed by such exchange charges operating as a severe discrimination against them in competition with commercial centers in which such charges were not made. The importance of the removal of this burden from the business of local communities may be appreciated when the amount of such exchange charges accruing in any year is considered. In competition with mail order

houses and with large business communities, such charges might readily represent the difference between success and failure.

(e) While the complete inauguration of this system would deprive the country banks of the exchange charges which they had heretofore realized, this loss would be more than offset by the promptness with which their checks could be collected, the benefits of an universal par exchange in collection of their own checks, and by the commercial advantage gained for the communities which they serve through the fact that they were relieved of the discriminating burden of exchange on commercial transactions.

This general review of the historical development of the commercial and banking systems of this country leading up to the enactment of the Federal Reserve Act and amendments thereto shows that there have been four distinct periods in our financial and commercial history.

The first period was that from the foundation of the Federal Government down to the termination of the second bank of the United States. During this period the national policy with regard to our currency system contemplated by the Constitution, inaugurated by Hamilton and sustained by Chief Justice Marshall in his great opinions on this subject, prevailed.

The second period extended from 1835 to the Civil War. During this period there was a reaction toward local or state control or supremacy in both political and financial affairs. This was the period of state banks of issue and of local currency having only a very limited circulation.

The third period extended from the close of the Civil War to the enactment of the Federal Reserve Act in 1913. It witnessed a strong reaction to the national system of currency and national control of financial trans-

actions. The machinery provided by the legislation of this period proved utterly inadequate for the expanded commercial business of the country during the latter years in which it was in vogue. It proved defective in many particulars, some of which have been pointed out.

The fourth period begins with the enactment of the Federal Reserve Act. It is characterized by a distinct expansion of national control over our currency and banking transactions and a clear intent on the part of Congress to free the commerce of the country from unnecessary restraint, and to make the machinery of our financial organization adequate to meet the expanding business of the country and adapt it to modern means of transportation and communication. To do this as we have pointed out it was absolutely necessary not only to provide an elastic currency system, but also to provide for a proper concentration of the banking reserves in a few institutions like the Federal Reserve Banks, and also to provide a system for check clearances at par throughout the United States, which would relieve the smaller communities and rural districts of the burden of exchange charges then imposed upon them by the prevailing methods, and as an offset to the loss which the local banks might thus sustain, giving to those banks the benefit of an universal clearance system for the prompt collection of checks through fixed and definite agencies.

2. *The true construction of Section 13 of the Federal Reserve Act as Amended.*

In a consideration of the language of this section of the act, in the light of the circumstances reviewed, in order to arrive at the true meaning and intent thereof, it seems desirable to examine the original act, and the purpose and effect of the several amendments.

(a) *The scope and effect of Section 13 as originally enacted.*

Under this section as originally enacted, the respective Federal Reserve Banks were authorized,

(1) to receive *on deposit* from (a) member banks, and (b) the United States, checks and drafts upon solvent *member banks*, payable upon presentation, and

(2) solely for the purpose of exchange to receive from other Federal Reserve Banks deposits of checks and drafts upon (a) solvent member banks, or (b) other Federal Reserve Banks, payable upon presentation.

The authority of the Federal Reserve Bank was thus limited in the original act to receiving for deposit, and thereafter for collection in due course checks and drafts drawn on banks which were members of the Federal Reserve System, and ~~from~~ upon other Federal Reserve Banks. This enabled member banks of the Federal Reserve System to collect checks on other member banks in their district through the central agency of the Federal Reserve Bank of that district, and to collect checks on member banks of another district, through the Federal Reserve Bank, and thus to establish a system for direct and prompt clearance and collection of checks among member banks throughout the country, through the agency of the respective Federal Reserve Banks of the several districts, which in turn cleared their daily balances thorugh a central gold fund held for their account in the Treasury at Washington, thus avoiding the shipment of currency.

The system of par collection among member banks thus sought to be established soon developed certain practical difficulties. Non-member banks could not collect through the Federal Reserve Banks direct, since the Federal Reserve Banks could only receive checks on deposit from member banks of other Federal Reserve Banks, but such non-member banks could collect through

member banks with which they maintained accounts. These member banks would thus collect items for non-member banks drawn on other member banks at par, but when the process was reversed and member banks sought to collect checks drawn on non-member banks, an exchange charge for remission was made by such non-member drawee banks. This resulted in a serious discrimination to the disadvantage of member banks.

(b) *Federal Reserve Banks authorized to handle checks on non-member banks without restriction as to exchange charges by Act of Sept. 7th, 1916.*

To meet this difficulty, Section 13 of the Federal Reserve Act was amended by Act of September 7, 1916 (39 Statutes, 752), so as to authorize any Federal Reserve Bank to receive

(1) from any of its member banks *on deposit or for collection* checks drawn on both member and non-member banks within its district, and

(2) from other Federal Reserve Banks *solely for collection* checks ~~payable upon presentation~~, drawn on either member or non-member banks within its district.

This amendment clearly authorized the Federal Reserve Bank to receive any check payable, upon presentation, within its district, regardless of the bank upon which it was drawn, or whether the drawee was a member or non-member bank. If it was drawn on a member bank it would be collected at par through the agency of the Federal Reserve System. If it was drawn on a non-member bank, the Federal Reserve Bank, on receiving the same, had the same rights, and was subject to the same duties with respect to the collection thereof as any other holder of a check in due course for collection.

A check is an unconditional order upon a bank or

banker to pay to a specified person or to his order or to bearer a certain sum of money. The holder has no right of action against the drawee until it is presented. If, upon presentation, it is accepted by the drawee bank, then the right of the holder is to receive lawful money therefor, or if acceptance or payment is refused, the duty of the holder is to give notice of the dishonor of the check, and look for reimbursement to the person from whom the check was received.

Under the provisions of this section, as thus amended, taken in connection with Section 16 of the Act, it is clear that checks on member banks were required to be received at par and cleared or collected at par, but the law was silent as concerned checks upon non-member banks received by the Federal Reserve Bank for collection, as provided by this section as amended. The Federal Reserve Bank as to such checks drawn on non-member banks within its district was in the position of any other holder of a check. It could contract with the drawee bank for the presentation of said check through the mail, and remittance by mail, but there was no obligation upon the drawee bank to remit by mail, its obligation being limited to the payment of the check upon presentation at the counter. If, therefore, the drawee bank was asked to remit by mail, not being a member of the Federal Reserve System, it was free under this statute as it then stood to ask the Federal Reserve Bank in consideration of the remittance by mail to allow some discount or deduction from the face of the checks paid and to accept its draft upon reserve deposits in some other bank.

The Federal Reserve Bank, as the holder of the check, then had the option either to accept these terms, in order to secure remittance by mail, or to present the check at the counter of the drawee bank and receive cash therefor. The authority and power of the Federal Reserve Bank to receive for collection and to collect checks

upon non-member banks within its district was clearly established by this statute as thus amended, subject to the conditions controlling the collection thereof, which we have outlined, and which applied to the Federal Reserve Bank under the statute as it then stood exactly as they applied to any other banking institution engaged in the collection of checks.

It was found, however, that this amendment to Section 13, while it eliminated some of the practical difficulties which arose under the operation of the original statute, did not completely provide for all conditions necessary to establish a universal par-clearance system, which it was the obvious purpose of Congress to establish under this act. The act as it was thus amended further presented certain practical difficulties in operation. While it authorized the Federal Reserve Banks to receive for collection and to collect checks and drafts drawn upon non-member banks as well as member banks within their respective districts, and thus gave them the general power of collecting checks, it made no provision for enabling the non-member banks to avail themselves of the Federal Reserve collection system if they so desired. This left the non-member banks in this position—while they must pay checks handled through the Federal Reserve Banks, if presented to them, when it came to collecting checks held by them on member banks or non-member banks either within or without the district, they would be compelled, in order to have the checks collected through the Federal Reserve System, to maintain reserve deposit accounts with member banks through which such collection could be made. This gave rise to the possibility that terms might be imposed with respect to deposits as a condition of collecting such checks, which would be unfair to the non-member banks. On the other hand, while member banks were required to pay their checks at par when presented through the Federal Reserve Bank, there was nothing in

the law as it then stood to prevent the Federal Reserve Bank from entering into an arrangement with non-member banks for allowance of exchange or charge for remittance as a condition of remitting by mail instead of presenting the check at the counter and demanding payment, which was the legal right of the Federal Reserve Bank as holder thereof. This opened the doors for discrimination between member and non-member banks unfavorable to the member banks.

(c) *Purposes of Act of June 21st, 1917, which prohibits exchange charges against Federal Reserve Banks.*

To remedy this condition and thus perfect the law on the subject, Section 13 of the act was further amended by the act of June 21, 1917 (40 Statutes 235). This amendment added to the statute, as it then stood, the provision authorizing any Federal Reserve Bank "solely for the purpose of exchange or of collection" to receive from any non-member bank or trust company a deposit of current funds in lawful money, national bank notes, Federal Reserve notes, *checks and drafts payable upon presentation or maturing notes and bills*, provided that such non-member bank or trust company should maintain with the Federal Reserve Bank of its district a balance sufficient to off-set the items in transit held for its account by the Federal Reserve Bank. The amendment contained a further proviso that nothing in the section of the act should be construed as preventing member or non-member banks from making reasonable charges, to be determined and regulated by the Federal Reserve Board, but in no case to exceed ten cents for one hundred dollars or fraction thereof, based on the total of checks and drafts presented at any one time for collection or payment, for collection or payment of checks and drafts and remittance therefor by exchange or otherwise, but expressly provided that "no such charges shall be made against the Federal Reserve Bank".

As a result of this amendment the conditions indicated above were remedied. The non-member banks were given the option to collect through the Federal Reserve Banks, provided they maintained with those banks sufficient deposits to cover items in transit, and on the other hand, the possibility of discrimination between member banks, which were required to remit at par, and non-member banks, as to which, under the section as amended on September 7, 1916, there was no specific provision on this subject, was removed by adding to the section the express provision that no charge for the payment of checks and remission therefor by exchange or otherwise, "shall be made against the Federal Reserve Banks".

By this section as thus developed and amended, complete and adequate provision was made for the universal par-clearance and collection of checks in the United States through the Federal Reserve Bank.

That the authority now existed in the Federal Reserve Banks to establish a universal system for par-clearance and collection of checks, would seem to be too clear for serious controversy. But it is submitted that this act not only gave the banks the authority to establish such a system, but required that they should do so, in the interest of the public at large.

The collection of checks at par is a valuable service, which the Federal Reserve Banks are authorized to render their member banks, and also, under the act as amended to non-member banks, if the latter desire to avail themselves of the privileges of the collection system. It is a valuable service to the public. The record in this case shows that a charge of one-tenth of one per cent upon intra district clearances made by the Federal Reserve Bank for the year 1919 would have amounted to $135,000,000. The losses incident to the delays and inconvenience of circuitous routing of checks through many banks under the older system, were, per-

haps, even more serious. By this system of par clearances this burden upon the commerce and industry of the country is eliminated.

¶It is an elementary principle in the construction of statutes that where power is given to public officers or institutions for the benefit of the public or of individuals, the language, though permissive, must be construed as mandatory and the power so given must be exercised in the interests of the individuals or the public for whose benefit it is conferred. This rule is well stated in the case of *Supervisors* v. *United States*, 4 Wall. 435, p. 446, in which this court construed the words "may, if deemed advisable" as mandatory, and stated the principle as follows:

> "The conclusion to be deducted from the authorities is that where power is given to public officers, in the language of the act before us,—or in equivalent language—whenever the public interest or individual rights call for its exercise the language used, though permissive in form, is in fact peremptory. What they are empowered to do for a third person the law requires shall be done. The power is given not for their benefit, but for his * * * In all such cases it is held that the intent of the legislature, which is the test, was not to devolve a mere discretion, but to impose a positive and absolute duty."

In the case of *Hogg* v. *City Council of Camden*, 39 N. J. Law 620, 622, the court, in construing a city charter authorizing the city to sell land for taxes, stated:

> "The power conferred must be exercised. It is a settled construction that where a public or municipal corporation or body is invested with power to do an act which the public interest requires to be done, and has the means of its complete performance placed at its disposal, not only the execution but the proper execution of the power may be insisted on as a duty, though the statute conferring it be only permissive in terms."

See also

Terre Haute &c. Co. v. *Indiana*, 194 U. S. 579;
Turner v. *Smith*, 18 Grat. 830;
Pensacola v. *Lehman*, 57 Fed. 324;
Clark v. *City of Elizabeth*, 61 N. J. Eq. 565;
Davidson v. *Davidson*, 17 N. J. Eq. 169.

Applying this familiar principle to the case at bar, it is clear that the language of Section 13 of the act, taken in connection with the entire statute and the purpose and intent thereof, required the Federal Reserve Bank in the interests of the banking system, and the public at large to exercise this authority, and to put into effect a universal system for the collection of checks at par, that is, without any charge being made against the Federal Reserve Bank for the remission or payment thereof.

Being thus vested with this authority and charged with this duty and obligation, the defendant, Federal Reserve Bank of the Fifth District had no alternative but to endeavor to put into effect this system with the least possible embarrassment or inconvenience to the banks concerned from the resulting change in the method of doing business as to those banks which had theretofore charged exchange for the payment of checks. As to the bank members of the system, whether national or state, this presented no difficulty, as these banks could be and were required to remit at par. As to the non-member banks, the Federal Reserve Bank as the holder or the agent of the checks drawn on such non-member banks, occupied exactly the same position as any other holder of checks drawn on such bank. There was no obligation on the drawee bank to the Federal Reserve Bank or the holder of such check unless and until such check was presented for payment at the counter and it was the duty of the Federal Reserve Bank, under the law, to thus present the check promptly and demand payment, and in event of non-payment, to protest the same and

return the check to the original holder in order that he and the intervening endorsers might protect their rights therein. A strict conformity with the legal rights of the parties might, however, result in inconvenience and expense, both to the Federal Reserve Bank, as the holder of the check, and to the drawee bank, in making payment thereof. It was, therefore, competent for the Federal Reserve Bank to arrange with the drawee banks not members of the system that check received by the Federal Reserve Bank would be forwarded by mail for presentation and collection, and that in consideration of the drawee banks waiving the actual presentation at counter, which was their legal right, the Federal Reserve Bank would accept in settlement of the amount of said checks, the draft of such drawee banks upon their exchange of deposits, which draft should be satisfactory as to character and place of payment to the Federal Reserve Bank.

But under the amendment of June 21, 1917, this right to make a voluntary modification of the legal status was subject to the provision of the Act of Congress that no charge should be made against the Federal Reserve Bank for payment or remission of checks by exchange or otherwise. Since the Federal Reserve Bank was subject to the act of Congress, and its right to contract was dependent upon and limited by that act, then, if the non-member banks, as a condition of entering into the arrangement for payment or remission by mail, insisted upon the charge of exchange, the Federal Reserve Bank could not enter into the contract, and was forced to fall back upon its legal right and duty to present the check at the counter and demand payment.

This is what the defendant, Federal Reserve Bank of the Fifth District did. As to all non-member banks which would agree to remit by draft at par, the defendant arranged to send checks for collection through the mail in accordance with the usual custom of business,

and to accept in settlement therefor satisfactory drafts of such non-member banks upon their reserve deposits in other banks, but where the non-member bank refused to remit at par and stood on its legal right either to demand an exchange charge for remittance or to require the presentation of the check at counter for payment, which it had a perfect right to do, then the Federal Reserve Bank had no alternative in the exercise of its authority and discharge of the duty and obligation imposed upon it to collect such checks, but to conform to the law and to present the check at the counter of the non-member bank for payment. In doing this, it was only exercising the authority and discharging the duties and obligations imposed by the express provision of the act of Congress, subject to the limitations prescribed in that act, and was exercising this authority and discharging these duties strictly in accord with the legal rights of the parties and exactly as any other holder of the check would have been required to do under similar circumstances. Since it exercised this authority and discharged this duty promptly without saving up or accumulating checks and with due regard to the rights and convenience of the drawee banks, as found by the court below, it was guilty of no wrong and violated no rights of the drawee banks, and, therefore, could not be subject to injunction.

This was a construction of Section 13 of the Act accepted and applied by the Supreme Court of North Carolina, and its construction was clearly right and should be affirmed.

Having thus placed before the court the construction of this section of the act for which we contend, and which was sustained by the Supreme Coart of North Carolina, and the respective rights, duties and obligations of the parties, resulting therefrom, we will now notice briefly the several contentions of counsel for the complainants as set forth in their brief in this court with respect to the construction thereof.

3. The positions of the complainants with respect to the construction of Section 13 of the Federal Reserve Act.

The arguments of counsel for the complainants (petitioners in this court) with respect to the construction of Section 13 of the Federal Reserve Act will be found under points one and two of their opening brief before this court, pages 8 to 21, inclusive. The several positions there taken as we understand them, will be considered in their order.

(a) *The contention that Congress could not by legislation or otherwise regulate the business or charges of non-member banks of North Carolina.*

It is unnecessary to consider the legal arguments of counsel on this subject, since it is our contention, which we think clear from a consideration of the law in connection with the facts and circumstances of this case, that Congress has not attempted to regulate or control the charges of non-member state banks. We submit that the arguments of counsel upon this point are predicated upon a misconception of the legal principles applicable to the transactions under review. It is admitted, of course, and expressly stated by counsel (Brief, p. 10), that Congress has full and complete power to legislate as to the Federal Reserve Bank and the Federal Reserve system. In the exercise of this power Congress has declared that the Federal Reserve Banks shall be authorized and under proper construction as we have shown, it shall be their duty and obligation, to receive and collect checks on all banks, member and non-member, within their respective districts, and has then expressly provided that no charge shall be made against the Federal Reserve Bank by such drawee banks for payment or remission of checks by exchange or otherwise. This legislation constitutes the authority of the

Federal Reserve Bank and imposes the limitations upon that authority. The Federal Reserve Bank must collect these checks. When a check upon a non-member bank, which it is required to receive and collect, comes into its possession, it has two alternatives:

(1) It may arrange by mutual agreement with the drawee bank to send that check for collection through the mails or other agency, and receive in discharge thereof satisfactory exchange or cash; or

(2) It may exercise its legal right to present the check at the counter of the drawee bank, through any agency it may select, and demand payment in cash, which is the contract represented by the check.

But it cannot in either case contract for or allow any charge against the Federal Reserve Bank for payment or remission of this check.

The first method would be obviously the more convenient. But since the drawee bank owes no obligation to the Federal Reserve Bank as the holder of this check until it is presented, the drawee bank may refuse to remit without deducting exchange. In that event the Federal Reserve Bank has no power to enter into an arrangement for remittance by mail or otherwise, since it cannot allow the charge for exchange. The parties being thus unable to agree as to a convenient method of handling the transaction and discharging the obligation, the Federal Reserve Bank has no alternative but to stand upon its legal rights and discharge its legal duty exactly as the drawee bank has elected to stand upon its legal right. This legal right and obligation of the Federal Reserve Bank is to present the check at the counter and demand payment in lawful money, and in event payment is refused to return check as dishonoured.

It is clear, therefore, that the Act of Congress au-

thorizing and requiring the Federal Reserve Bank to receive these checks for collection, and thus to collect the same, and prohibiting it from accepting any charge against it for payment or remission thereof by exchange or otherwise, does not in any way modify or affect the legal rights of the non-member drawee bank. It is simply a limitation upon the right of the Federal Reserve Bank to contract for the payment of the check by a method other than that prescribed by the technical law, unless in consideration therefor the drawee bank is willing to pay the same at par without charge for payment or remission. The drawee bank is under no obligation whatever to do this. It can stand on its legal rights. But it cannot force the Federal Reserve Bank to enter into a contract different from the legal rights of the parties to allow the drawee bank to deduct exchange when the making of that contract by the Federal Reserve Bank is expressly prohibited by Act of Congress. If, therefore, the drawee bank elects to stand on its legal right to have the check presented at counter unless the Federal Reserve Bank will consent to an arrangement which it is prohibited by law from making, the Federal Reserve Bank is forced in the discharge of the duty imposed upon it by Congress to collect the checks strictly in accordance with the law, and present the same at the counter of the bank for payment, just as any other holder of a check would do. It then becomes the obligation of the drawee bank to pay the same in lawful money at par, and if it refuses to do so, it is the legal duty of the Federal Reserve Bank as holder of the check to give notice that it has been dishonored by non-payment.

It would seem obvious, therefore, that the Act of Congress controlling the Federal Reserve Bank and limiting its power to contract for the allowance of exchange charges against it, is purely a regulation of the Federal Reserve Bank, which it is admitted Congress has the power to regulate. If the non-member state banks do

not wish to conform to this condition, they are entirely at liberty to stand on their legal rights and pay their checks at the counter in accordance with the contract between the parties represented by said check.

The whole argument of counsel on this point, therefore, proceeds upon the wrong theory as to the nature of the transaction under consideration, and when the nature of that transaction is made clear, the argument necessarily fails since there is no regulation or attempt to regulate non-member state banks.

(b) *The contention that the amendment of June 21, 1917, prohibiting charges for exchange against Federal Reserve Banks applies only to member banks and those non-member banks which avail themselves of the great privileges of the Federal Reserve system.*

We cannot conceive upon what theory counsel can ask the court to read into an Act of Congress absolute and general in its terms an exception not suggested in that act.

The Federal Reserve Bank is authorized and it is made its duty to receive and collect checks payable upon presentation *within its district* either upon member or non-member banks without exception, and whether such non-member banks elect to avail themselves of the collection facilities of the Federal Reserve system or not. This provision of the statute covers all checks payable upon presentation within the district. Then the language of the limitation is that "no such charges (that is, charges for collection or payment of checks by exchange or otherwise,) shall be made against the Federal Reserve Bank."

The language of the statute clearly authorizes the Federal Reserve Bank to accept and collect checks upon non-member banks which do not avail themselves of the collection facilities of the Federal Reserve system. As

to this there can be no question, for the statute is perfectly clear. It covers all checks payable upon presentation within the district, without reference to the drawee. Then it says that no charge for collection or payment or remission by exchange or otherwise shall be made against the Federal Reserve Bank.

How can there be read into this statute an exception in favor of those non-member banks who do not collect through the Federal Reserve Bank? If they do not wish to avail themselves of the collection facilities of the Federal Reserve Bank they need not do so. If they do not wish to remit by mail in payment of the checks by draft on their reserve deposits without deducting exchange, they do not have to do so. But in that event, since they stand upon their legal right to have the check presented at counter by the holder, they must pay the check when so presented at par in lawful money, and they cannot complain if the Federal Reserve Bank exercises its authority and discharges its duty under the Federal law to so present the check.

(e) *The contention that the Federal Reserve Bank only acts as agent in the collection of such checks and that an exchange charge against it would not be a charge against the bank but against the principal for which it acts.*

It seems to us entirely immaterial whether the Federal Reserve Bank, in presenting a check upon a non-member bank, is the actual owner thereof, or is merely the holder for the purpose of collection, and there is nothing in the Act of Congress which indicates any intent to distinguish between those checks which it holds as owner and those checks which it holds for collection. In fact, the determination of the relationship of a Federal Reserve Bank to checks deposited with it, is in the case of each check a mixed question of law and fact. If the depositor draws against the credit extended on

the check the bank becomes the holder, otherwise it is an agent for collection.

The whole argument of counsel on this branch of the case seems to proceed upon the erroneous theory that a drawee bank has the legal right to deduct exchange for the payment of its checks. This is not the case. The obligation of the drawee bank is to pay the check for the full amount in lawful money when presented at its counter. If, for convenience, the holder of the check desires to send it for collection through the mails or other agency direct to the drawee bank, and to ask the drawee bank to remit at par in payment thereof, then in consideration of this convenience to the holder, the drawee bank has a right to contract as to the terms upon which it will remit, and thus vary its legal obligation by contract with the holder. If it refuses to remit except upon the payment of a charge therefor in the nature of exchange, and the holder, whether it be the Federal Reserve Bank or any other person or institution, declines to pay this charge as a consideration for the convenience of having payment remitted instead of presenting the check at counter, ~~it~~ the drawee has a perfect right to refuse to ~~accept~~ waive the charge, or to enter into the arrangement for the modification of the legal rights of the parties. The holder ~~It~~ then has the right to present the check at counter, which is its contract right, and demand payment of the drawee bank in cash.

Since the holder of checks drawn upon non-member banks have the right to refuse to pay exchange charges, they have the right in the absence of any limitation of powers of the Federal Reserve Bank by statute, to require the Federal Reserve Bank as their agent to refuse to pay such exchange charge, and to present the check at the counter as the original holder would have the right to do. In that event it becomes the duty of the drawee bank to pay at par in lawful money. It is therefore immaterial whether the Federal Reserve Bank pre-

sents the check as owner or as the agent of some other owner. The principles of law are the same.

But it should be noted that the language of this statute makes clear the intent of Congress on the subject. The statute does not say that the Federal Reserve Bank shall not pay exchange itself, but says that no charge for payment or remission of exchange shall *be made against the Federal Reserve Bank*, that is, the Federal Reserve Bank *is not authorized to accept such charge* on any check which it collects, or to contract for any such charge whether it presents the check as owner or as agent for collection. It is authorized to collect the checks whether as owner or agent, no distinction being made in the Act. It is prohibited from accepting any deduction for exchange. If it cannot arrange with the drawee nonmember bank to remit without deduction for exchange, then as holder of the check, whether as owner or agent, it must present the same for payment at the counter and receive lawful money therefor in order to comply with the Federal statute, which is the law controlling its action. This is no interference with the legal right of the drawee bank. It is merely a limitation upon the power of the Federal Reserve Bank to contract for a modification of the strictly legal method of collection of checks, or to accept any charge for exchange, whether it acts as principal or as agent.

It is contended by counsel that the collection of checks on state banks not members of the Federal Reserve System by the Federal Reserve Banks is not necessary. This argument might have been addressed to Congress as a ground for making exception in the statute, but it does not authorize the court to make exceptions which Congress did not make. The question of the necessity for putting into effect this universal system of par collection was a question to be determined by Congress in the exercise of its discretion to legislate in the public

interest. Congress having determined that it was necessary or desirable that the Federal Reserve Banks should exercise this authority and discharge this duty, and having fixed the conditions upon which they should do this, it only remains for the court to protect them in the discharge of the duties thus imposed. The question of the necessity or wisdom of this legislation has been determined by Congress and is not open for consideration.

(d) *The claim that the construction of the Act for which we contend is unjust to state banks, and will result in loss of revenue to them, and therefore should not be sustained.*

This also was a question for the consideration of Congress and not the courts. As we have already pointed out, the conditions under which the custom of charging exchange for the remission or payment of checks arose no longer exists. This charge imposed an enormous burden upon the commerce and industry of the country, an amount which we have already indicated at one-tenth of one per cent on the clearances through the Federal Reserve Banks for the year 1919 would have ~~will~~ aggregated $135,000,000 per annum. With the development of the system of par collection through voluntary clearing houses in the commercial and industrial centers of the country, and the imposition of exchange charges in the more sparsely settled and remote districts, when the necessity for remission of currency no longer existed, resulted in a severe discrimination against the industry of the outlying districts, which, in cases of competition, would be sufficient to be destructive of that industry. All of these and other considerations existed to appeal to the judgment of Congress for the establishment through the Federal Reserve system of a universal par clearance for the benefit of the whole country. The evolution of industrial and commercial life always results in apparent hardship to someone, but it is none the less necessary. The sub-

stitution of the railroad for the stage coach resulted in loss to those operating stage coach lines, and was earnestly resisted. This is an incident of every change in the industrial or commercial methods. It is none the less necessary to human progress that these changes should be made, that lost motion should be eliminated, that charges upon commerce, industry and exchange should be abolished when the conditions requiring them no longer exist. That there may be individual cases of losses resulting is true, but the general benefit, even to those who sustain immediate loss, from cheaper and better methods of doing business and resulting increase in industrial and commercial activities far more than offset the loss.

But all of these considerations should be addressed to the legislative branch of the government. In the case before us Congress, in the exercise of a power clearly vested in it, has, by legislation, developed through a series of amendments having a definite constructive purpose, authorized and required the Federal Reserve Banks to receive for collection and to collect checks payable upon presentation within their respective districts, regardless of whether they are drawn upon member or non-member banks or anyone else. This authority being given for the benefit of the banking system and the public at large, imposes a duty and obligation upon the Federal Reserve Banks to exercise the same. The Federal Reserve Bank is prohibited from accepting or permitting any charge for exchange in remission of checks. If the complainants or other non-member banks desire to have their checks sent for collection through the mails or other usual agencies, and to remit in payment thereof with acceptable drafts upon their reserve deposits, the defendant, Federal Reserve Bank, is ready, willing and anxious to make this arrangement to promote the convenience of the drawee banks and facilitate commercial exchange. But this arrangement can only be made by

consent of both parties and subject to the limitation imposed upon the Federal Reserve Bank by Act of Congress that it cannot accept any charge for exchange in the payment or remission of checks. If the non-member drawee banks are unwilling to remit by exchange without deducting such charge, then the Federal Reserve Bank is unable to accept the remittance, and is forced, in order to exercise the authority and discharge the duty imposed upon it by Act of Congress to present the check at the counter of the drawee bank and accept payment in cash, or in event of non-payment to return the same dishonored.

This is the course followed by the defendant in this case, and we submit that the Supreme Court of North Carolina was clearly right in sustaining its position, and in holding that under the terms of the Federal Reserve Act the Federal Reserve Bank of Richmond was prohibited "from permitting any discount to be deducted from the face amount of checks which it held for collection."

POINT II.

That the Act of the Legislature of North Carolina (Chapter 20, Public Laws 1921) upon which complainants rely is invalid in that it is in conflict with the valid Acts of Congress which, under the Constitution, are the Supreme Law of the land, and in its purpose and effect it seeks to limit and restrain a Federal Agency created by Congress in discharge of the duties and functions imposed upon it by Acts of Congress.

The discussion of this point involves the consideration of the statute of North Carolina (Chapter 20, Public Laws 1921), in connection with the Federal Reserve Act, and especially Section 13 thereof, which has been reviewed and discussed. The North Carolina statute has already been quoted, and will be found in the Record at p. 79.

This subject will be examined in two aspects—(1) The contention that the North Carolina statute is in conflict with the provisions of the Federal Reserve Act, and (2) that it seeks to limit and restrain a Federal Agency created by Congress in the discharge of the duties and functions imposed by Congress.

(1) *The act of the North Carolina Legislature (Chapter 20, Public Laws, 1921,) is invalid as to the defendant, as being in conflict with the provisions of the Federal Reserve Act, and especially Section 13 thereof.*

The validity of this act is sought to be maintained upon the ground that it is a regulation by the legislature of North Carolina of state banks and trust companies organized under the laws of that state. We are not in this case concerned with the extent or the nature of the regulations imposed upon or prescribed for the benefit of state banks and trust companies of North Carolina by the legislature of that state, except as to the extent to which they may be in conflict with valid acts of Con-

gress for the regulation or control of the defendant, Federal Reserve Bank. To the extent to which such state statute may be in conflict with the Acts of Congress or in derogation of the power or rights of the defendant, Federal Reserve Bank, conferred by such acts, it is invalid as to the defendant and can give no basis for injunctive or other relief against the defendant. Whether its provisions which may not affect the defendant are invalid as regulations of state banks and trust companies, we need not inquire.

That such conflict exists is apparent from a most cursory examination of the provisions of the two acts. The act of Congress, as we have seen, imposes upon the Federal Reserve Bank created by that act the authority and duty to collect checks payable upon presentation, regardless of the banks upon which they are drawn, and provides that no charge shall be made against the Federal Reserve Bank for the payment or remission of said checks by exchange or otherwise.

The act of the legislature of North Carolina, Section 1, declares that it shall be lawful for all banks and trust companies of that state to charge a fee not in excess of one-eighth of one per cent on remittances covering checks, with a minimum fee of ten cents. Therefore, if the check held by the Federal Reserve Bank is paid by remittance, the Act seeks to authorize drawee bank to make a charge, which the Federal Reserve Bank is expressly forbidden by Act of Congress to accept.

In order to prevent the Federal Reserve Bank from avoiding this payment, and ~~still~~ collect ing the check by presentation at counter, Section 2 of the act provides that all checks drawn on state banks and trust companies of North Carolina, unless otherwise specified on the face thereof by the makers, shall be *payable* at the option of the drawee banks *in exchange drawn on the reserve deposits of such drawee bank*, when any such check is presented by or through any *Federal Reserve Bank*, post-

office or express company, or any respective agent thereof. Thus, it follows that while the Federal Reserve Bank cannot accept any charge for exchange for remission in payment of checks, yet the legislature of North Carolina undertakes to require that when the Federal Reserve Bank presents a check either direct or through the post-office or express company, it shall be payable by draft of the drawee bank drawn on its reserve deposits, and that by Section 1 of the act the drawee bank can make an exchange of one-eighth of one per cent. Thus, if this act be valid, the Federal Reserve Bank is forced to accept the charge of one-eighth of one per cent on all checks presented by it on state banks and trust companies of North Carolina, in the face of the positive provisions of the Act of Congress that no such charge shall be made. But the act goes further. In order to prevent the Federal Reserve Bank from avoiding these provisions, by presenting the checks at the counter and demanding payment at par, as every holder of a check is entitled to do under the law, Section 5 of the act expressly provides that no officer of the state shall protest a check for non-payment where payment is refused solely on account of the refusal of the holder or owner thereof *to pay exchange*, and no right of action will lie on such check. No one can read this statute without reaching the conclusion that it not only conflicts, but was intended to conflict with, and if possible, to override the provisions of the Federal Reserve Act.

Upon this state of the facts, the Supreme Court of North Carolina held that the state statute was invalid, as being in conflict with the Federal Reserve Act, and in reaching this conclusion said:

> "The Federal statute, being a regulation of the Federal Corporation by Congress, the Act of this State authorizing the paying bank *here to exact exchange is in direct conflict with the duty imposed* upon the Federal Reserve Bank by the Act of Con-

gress and the Reserve Bank acts within its duty to observe the provision of the Federal Act by refusing to receive a check for less than the face amount of the check sent by it for collection. It is true it cannot enforce payment of the face amount except by personal presentation of the check at the counter of the paying bank but it has a right to refuse a check sent to it by the paying bank for less than the full face amount and to protest the check it has sent here for collection for non-payment. The matter then becomes one between the drawer of the check and the paying bank who refuses to pay it." (Italics ours.)

Assuming that the construction of Section 13 of the Federal Reserve Act for which we contend, and which was adopted by the Supreme Court of North Carolina, as conferring authority and imposing a duty upon the Federal Reserve Bank to collect these checks at par, is correct, then the construction of the state statute by the Supreme Court of North Carolina, holding that properly constructed it was in direct conflict with the Federal Reserve Act, is conclusive and binding in this court, and the subject is no longer open for discussion.

This rule is well settled in this court and has been applied in numerous cases in which the construction of a state statute by the highest court of the state is held to be binding upon this court, except in certain specified cases, otherwise provided by law, not here involved.

Providence Institution v. *Massachusetts*, 6 Wall. 611;

Great Western Telegraph Co. v. *Purdy*, 162 U. S. 329;

Gulf &c. Co. v. *Hewes*, 183 U. S. 66;

Lane County v. *Oregon*, 7 Wall. 71;

Noble v. *Mitchell*, 164 U. S. 397.

But assuming that this court may desire to examine

question further, we shall submit briefly the reasons
l authorities in support of our position, which need
be regarded if the court should accept the view that
construction of this statute, holding it to be in con
t with the Federal law, made by the Supreme Court of
rth Carolina is conclusive.

Article VI of the Constitution of the United States
vides as follows:

> "This Constitution and the laws of the United States, which shall be made in pursuance thereof; and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

In a consideration of this subject, it is recognized,
course, that in construing acts of Congress and acts
he State Legislature, the court will not hold the law
be invalid unless a clear conflict exists, or the legal
ct of the act of the Legislature is to restrain or limit
effect of an act of Congress. If, however, upon a
interpretation thereof it appears that there is any
flict between the two, the Act of the Legislature must
held invalid as being in conflict with the supreme law
he land. As was stated by the Supreme Court of the
ted States in *McCray* v. *U. S.*, 195 U. S. 60:

> "In such a case the result of a test of necessary operation or effect is to demonstrate for want of power because of the controlling nature of the limitations imposed by the Constitution of the United States."

In the case of *Hauenstein* v. *Lynham*, 100 U. S. 490,
court said:

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> "It must always be borne in mind that the Constitution, laws and treaties of the United States are as much a part of the law of every state as its own local laws and Constitution. This is a fundamental principle in our system of complex national policy."

In discussing this question in the great case of *McCullough* v. *Md.*, 4 Wheat. 316, 426, Mr. Chief Justice Marshall lays down the principle as follows:

> "This great principle is, that the Constitution and the laws made in pursuance thereof are supreme; that they control the Constitution and laws of the respective states, and cannot be controlled by them. From this, which may be almost termed an axiom, other propositions are deduced as corollaries, on the truth or error of which, and on their application to this case, the cause has been supposed to depend. These are, 1st, that a power to create implies a power to preserve. 2d, that a power to destroy, if wielded by a different hand, is hostile to, and incompatible with these powers to create and to preserve. 3d, that where this repugnancy exists, that authority which is supreme must control, not yield to that over which it is supreme."

The doctrine thus stated has so often been repeated and applied in cases involving State taxation, interstate commerce and other matters in which a conflict has arisen between the acts of Congress and State Legislature that it would serve no good purpose to accumulate authorities and decisions except to illustrate the doctrine and the limitations thereof well stated in the foregoing opinions. If the court desires to examine the general principle further, it is referred to the additional cases of

Northern Securities Co. v. *U. S.*, 193 U. S. 344;
Ex parte Sibold, 100 U. S. 398;
Cohen v. *Virginia*, 6 Wheat. 381;

Osborne v. *The Bank*, 9 Wheat. 738;
Waite v. *Dowley*, 94 U. S. 532;
Tenn. v. *Davis*, 100 U. S. 263;
Charge to the Grand Jury, 1 Sprague 602, 30 Fed. Cas. No. 18273.

In this celebrated Charge to the Grand Jury, the court lays down the principle as follows:

> "The Constitution and laws of the United States extend to, and are paramount over, all the territory of every state, and cannot be annulled nor the force of either of them be in any degree impaired by any law of a state, no matter in what form or with what solemnity such law may have been enacted, or by what name it may be designated; whether it be a constitution, an ordinance, a statute, or a resolve. So far as it conflicts with the Constitution, or with any valid law of the United States, it is utterly nugatory, and can afford no legal protection whatever to those who act under it."

The power of Congress to create national banks, such as defendant, The Federal Reserve Bank, has been thoroughly recognized and established since the cases of *McCullough* v. *Maryland*, 4 Wheat. 316, and *Osborne* v. *Bank*, 9 Wheat. 738, and this power has been exercised by Congress in the creation of the First and Second Bank of the United States, the National Banks of issue, and The Federal Reserve Banks.

It is equally well settled that this power to create banks carries with it the right on the part of Congress to confer on such banks all incidental powers which in the judgment of Congress may be reasonably necessary for the efficient and successful operation of the agencies so created, and the carrying out of the policy of Congress with respect thereto, in so far as the power is not limited by the express terms of the Constitution. Thus in the opinion of Mr. Chief Justice Marshall in *McCul-*

lough v. *Maryland*, 4 Wheat. 316, 421, so often quoted, it is said:

> "Let the end be legitimate—let it be within the scope of the Constitution—and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional."

See also

Osborne v. *Bank*, 9 Wheat. 738;
Legal Tender Cases, 12 Wall. 457;
Legal Tender Cases, 110 U. S. 421;
Davis v. *Elmira Savings Bank*, 161 U. S. 275;
First Nat. Bank v. *Michigan*, 244 U. S. 416.

It is not essential that the powers so conferred by Congress shall be necessary to the exercise of the original or primary purpose for which the bank or national agency may have been created, but if they are appropriate to the purposes for which such agency was established, or incidental to its operations and are not forbidden by the express terms of the Constitution, then the judgment of Congress as to whether they should be conferred upon such agency is conclusive, and its action in conferring such powers is binding upon the states and all governmental agencies thereof.

An allustration of this principle will be found in the case of *Davis* v. *Elmira Savings Bank*, 161 U. S. 275. In that case the State of New York by statute undertook to regulate the payment of the obligations of an insolvent bank. The court held this statute to be void as in conflict with Acts of Congress giving to the Comptroller of the Currency the power over the administration of insolvent national banks and providing for the distribution of their assets. At the very outset of his opinion in this case, Mr. Chief Justice Waite said:

> "National banks are instrumentalities of the Federal Government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States. It follows that an attempt, by a state, to define their duties or control the conduct of their affairs is absolutely void, wherever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation or impairs the efficiency of these agencies of the Federal Government to discharge the duties, for the performance of which they were created. These principles are axiomatic, and are sanctioned by the repeated adjudications of this court."

One of the latest cases in which this doctrine has been applied is the case of *First National Bank* v. *Fellows*, 244 U. S. 416. In that case the court was called upon to consider the legislation of Congress conferring upon national banks the right to act as trustee, executor, administrator or registrar of stocks and bonds under such rules as The Federal Reserve Board might prescribe. Obviously the power to act as executor or trustee within a state is not one of the powers which can be primarily conferred by Congress, but Congress undertook by this statute to confer this power upon national banks as an appropriate power incident to their operation as banks, and in its judgment necessary for their successful operation in competition with other banking institutions. The Supreme Court sustained the act and the power of Congress to confer this right upon national banks. The effect of the decision is summarized in the following extract from the syllabus, pp. 416, 417:

> "By the principles fully settled in *McCullough* v. *Maryland* and *Osborne* v. *Bank*, and other cases, the implied power of Congress to confer a particular function upon a national bank is to be tested, not by the nature of the function viewed by itself, but by its relations to all the functions and attributes

of the bank considered as an entity; the necessity or appropriateness of the function should be considered with reference to the situation to which it relates; and, as to what is necessary or appropriate, a court should not substitute its judgment for the judgment of Congress.

"As settled also by those cases, the circumstance that a function is of a class subject to state regulation does not prevent Congress from authorizing a national bank to exercise it; nor would it lie with the state power to forbid this.

"A business not inherently such that Congress may empower national banks to engage in it may, nevertheless, become appropriate to their functions if, by state law, state banking corporations, trust companies, or other rivals of national banks are permitted to carry it on."

See also *Fidelity National Bank* v. *Enright*, decided by the United States Court for the Western District of Missouri in May, 1920, 264 Fed. 236.

In the application of these principles, the courts have been ever zealous to protect national banks from any effort of the states to discriminate against them by legislation or otherwise. This policy is well stated by the court in the case of *Tiffany* v. *National Bank of Missouri*, 18 Wall. 409, where it is said:

"National banks have been national favorites. They were established for the purpose, in part, of providing a currency for the whole country, and in part to create a market fo the loans of the General Government. It could not have been intended, therefore, to expose them to the hazard of unfriendly legislation by the states, or to ruinous competition with state banks."

See also

First National Bank v. *Commonwealth of Ky.*, 143 Ky. 816, 34 L. R. A. (N. S.) 54;

Hawley v. *Hard*, 72 Vt. 122, 52 L. R. A. 195;
State v. *Clement National Bank*, 84 St. 167, 78 Atl. Rep. 944;
Merchants' Natl. Bank v. *City of Richmond*, decided by Supreme Court in June, 1921.

In the light of recognized principles as illustrated in the authorities cited, it would seem to be too clear for argument that the conflict between the Federal and State statutes under consideration, which the Supreme Court of the State of North Carolina found to exist and to be fatal to the state statute, so far as the defendant is concerned, is too clear for serious controversy.

In one aspect this act seeks to make it impossible for the Federal Reserve Bank to collect checks on state banks and trust companies of North Carolina, which it is authorized and required to do by Act of Congress. Section 2 of the Act provides that any check drawn on state banks or trust companies of North Carolina, unless it is specified on its face to the contrary, shall be payable "in exchange drawn on reserve deposits of said drawee bank", when presented through the Federal Reserve Bank or the agencies named. If the act is valid the Federal Reserve Bank on presenting check, is compelled to accept this exchange draft. One drawee bank in North Carolina could, therefore, give an exchange draft on its reserve deposits in another bank in North Carolina, and that bank in turn could give an exchange draft on still another bank in North Carolina, and this might go on *ad infinitum*, so that the Federal Reserve Bank could never collect the check. Some of these drafts drawn on reserve deposits might prove to be worthless, and thus, the Federal Reserve Bank would lose the amount of the check. In this way it is sought to defeat entirely the right of the Federal Reserve Bank to collect checks on state banks and trust companies of North Carolina, although it is authorized and required to do so by act of Congress.

Further analysis of the act would seem to be useless. It is clear that its provisions are and were intended to be in direct conflict with the provisions of the Federal Reserve Act, and that the Supreme Court of North Carolina was clearly right in so holding. The Federal statute being made supreme by the provisions of Article VI of the Federal Constitution, it necessarily follows that the act of the legislature, insofar as it affects the defendant, is clearly invalid, and can constitute no basis for injunctive or other relief against the defendant.

(2) *The act of the legislature of North Carolina is invalid in that it seeks to limit and restrain a Federal Agency created by Congress in the discharge of the duties and functions imposed upon it by Act of Congress.*

As we have already pointed out, the Federal Reserve Bank exercises functions of two classes: (1) It is a fiscal or public agency of the United States, and (2) it exercises certain general functions of commercial banking corporations, such as the collection of checks, purchase and discount of commercial paper, making of loans and other similar transactions. The authorities already cited clearly establish the proposition that where Congress has power to create an agency of this character, it may confer upon such agency functions necessary to its successful operation, although they were not originally within the scope of congressional action, and the necessity or appropriateness of its act in conferring such functions upon such agencies is not subject to review by the courts.

As was said by this court in *First National Bank* v. *Fellows*, 244 U. S. 416:

> "As settled also by those cases, the circumstance that a function is of a class subject to state regulation does not prevent Congress from author-

izing a national bank to exercise it; nor would it lie with the state power to forbid this."

McCullough v. *Maryland*, 4 Wheat. 416, 421;
Fidelity National Bank v. *Enright*, 264 Fed. 236;
Tiffany v. *National Bank of Me.*, 18 Wall. 409;
Railroad Commission v. *Chicago &c. Railroad*, 66 Law Edition Supreme Court Reports 227;
Lemke v. *Farmers Grain Co.*, 66 Law Ed., Supreme Court Reports 273.

Congress having created this essential public agency, known as the Federal Reserve Bank, clearly has the power, in order, in its discretion, to provide for the successful operation of those banks and their maximum service to the public, to confer upon the banks the powers and duties of ordinary commercial banking corporations, including, among others, the power and duty to collect checks, and to act as a clearing agency for the collection thereof. This Congress has elected to do, and the wisdom or propriety of its action is not subject to review by the courts.

The legislature of North Carolina, in effect, undertakes to impose limitations and restraints upon the exercise of these functions and the discharge of these duties by the Federal Reserve Bank, and indeed undertakes to make the collection by the Federal Reserve Bank of checks drawn on state banks and trust companies of North Carolina impossible. This is clearly a limitation and restraint upon the exercise of the legitimate functions conferred by Congress upon an essential Federal Agency, and, therefore, invalid.

The principle as stated by this court in the recent case of *Lemke* v. *Farmers' Grain Co.*, 66 L. Ed., Supreme Court Reports 273, is applicable to this point:

> "It is alleged that such legislation is in interest of the grain growers, and essential to protect them from fraudulent purchases, and to secure pay-

ment to them of fair prices for the grain actually sold. This may be true, but Congress is amply authorized to pass measures to protect interstate commerce if legislation of that character is needed. *The supposed inconveniences and wrongs are not to be redressed by sustaining the constitutionality of laws which clearly encroach upon the field of interstate commerce, placed by the Constitution under Federal control.*" (Italics ours.)

We submit, therefore, that the act of the legislature of North Carolina, insofar as it affects the defendant, or is relied upon as the basis for injunctive or other relief against the defendant, is invalid for both reasons stated, and that the Supreme Court of North Carolina was clearly right in so holding.

(3) *The position of counsel for complainants (petitioners here) examined.*

This subject is discussed by counsel for complainants under Point 3 of their opening brief in this case, pp. 22-28. In this discussion counsel undertake to set forth and maintain the validity of the several sections of the act separately. We take it to be an elementary principle of construction that the provisions of a statute must be taken as a whole, and the intent of the legislature and the effect of its action arrived at from the consideration of the instrument as a whole. Thus viewed, there can be no question but that this state statute was passed for the purpose of preventing the Federal Reserve Bank from doing what it was authorized and empowered to do by Act of Congress, and the holding of the Supreme Court of the State of North Carolina to that effect is conclusive.

Counsel discuss this question under two headings, each of which will be noticed.

(a) *The contention that Section 1 of the act is not*

repugnant to the Hardwick Amendment, being a mere regulation of exchange charges by State banks.

It is suggested by counsel that we rely upon the provisions of the Amendment June 21, 1917, to Section 13 of the Federal Reserve Act, and that this was not intended to restrict exchange charges by state banks. We have already considered this subject and will not weary the court by repetition of the argument. We do not rely exclusively upon the Amendment of June 21, 1917, but upon the provisions of the Federal Reserve Act, and especially Section 13 thereof, as a whole. These provisions even before that Amendment was enacted clearly authorize the Federal Reserve Bank to receive and collect checks on non-member banks as well as member banks.

Prior to the Amendment of June 21, 1917, the Federal Reserve Bank might have allowed exchange charges to non-member banks for remission in payment of checks, but if it did not desire to do so, it had the right, as any other holder of a check, to present it at counter and demand payment at par in lawful money. When this Amendment was passed, the Federal Reserve Bank no longer had any option in the matter, as it was thereby expressly prohibited from paying charges for exchange on the collection of any checks without exception or discrimination. It was compelled, therefore, in order to discharge the duty of collecting checks, as required by the terms of the Federal Reserve Act, to either induce the drawee bank to remit by satisfactory draft at par, or if the drawee bank refused to do this, to present the check for payment at the counter of the bank and demand lawful money therefor without deduction for exchange.

As we have already pointed out, the authority to collect checks being given for the benefit of member banks and the public was mandatory, and since the

drawee state banks refused to remit at par, the Federal Reserve Bank was compelled to present the checks promptly and demand payment at par in lawful money.

The act of the legislature of North Carolina undertook to prevent this in the manner already set forth, and it was, therefore, clearly invalid as being in conflict with the Federal Statute.

(b) *The contention that Section 2 of the Act does not conflict with the Act of Congress.*

Section 2 of the act must be construed together with Section 1, which allows state banks and trust companies of North Carolina to charge an exchange on remittances in payment of checks. Section 2 then requires the Federal Reserve Bank to accept exchange drafts in payment of checks, which, under Section 1, gives to the bank issuing the draft the right to deduct exchange. The two sections thus taken together seek to confer upon the banks and trust companies of North Carolina the right to pay their checks by exchange drafts on reserve deposits, and to deduct one-eighth of one per cent. exchange for making such payment, and to require the Federal Reserve Bank to accept such payment if it collects the check, while the Federal statute prohibits the Federal Reserve Bank from accepting any such charge.

But this section goes even further and undertakes to force the Federal Reserve Bank, if it collects checks on state banks and trust companies of North Carolina, to accept exchange drafts on their reserve deposits, whether the drafts be good or bad, and make checks drawn on such banks *payable* by such exchange drafts. We will consider this phase of the matter when we come to discuss the constitutionality of this act, on the ground that it undertakes to make something else than gold and silver coin legal tender in payment of debts.

Counsel contend that the purpose of this statute was to protect the banks from financial violence or warfare on the part of the Federal Reserve Bank. We recognize, of course, that a lawful act may be done in an unlawful manner, but this question is entirely eliminated from this case by the finding of the court below, affirmed by the Supreme Court of the State of North Carolina, that the defendant was guilty of no wrongful conduct or method of presenting these checks, but presented the same promptly without intent to wrong or inconvenience the drawee banks. To this finding there was no exception.

It is not competent for state legislature to prohibit a Federal Agency from discharging in a lawful manner those functions and duties imposed upon it by Act of Congress, because some other institution may, in the discharge of such duties, commit unlawful acts. If unlawful acts are committed or threatened, the court should prevent such acts, but the legislature cannot on that ground forbid the doing of lawful acts authorized by act of Congress by such agencies. There is no question of financial violence or warfare in this case. The record presents a simple question of law and the Supreme Court of North Carolina correctly held that the act was invalid, for the reason that it was in conflict with the essential provisions of the Federal Statute.

It is suggested that if the position for which we contend is maintained, Congress may by chartering corporations and conferring limited powers coerce corporations of states to forego their rightful revenues and deprive the states of the power to protect such corporation from such practices. We are not concerned with what Congress may or may not do. The subject is too broad for general discussion. If a wrong arises by virtue of an Act of Congress, or otherwise, the remedy will be found for that wrong in the proper forum. We prefer to confine ourselves to a discussion of this case, and rely

upon the principle stated by this court in *Lemke* v. *Farmers' Grain Co., supra,* that:

> "The supposed inconveniences and wrongs are not to be redressed by sustaining the constitutionality of laws which clearly encroach upon the field of interstate commerce, placed by the Constitution under Federal control."

So we submit that "the supposed inconveniences and wrongs" suggested, if such arise in the future, may be remedied in the proper forum, but they are not to be redressed by sustaining the constitutionality of state statutes which clearly encroach upon the field of and are in conflict with valid Federal statutes, and seek to limit and restrain an essential Federal Agency in the discharge of those functions and the performance of those duties which Congress, in its discretion, has imposed upon it. We submit, therefore, that the holding of the Supreme Court of North Carolina on this point was clearly right and should be affirmed.

POINT III.

That the Act of the Legislature of North Carolina (Chapter 20, Public Laws 1921) upon which complainants rely is invalid, in that it violates the provisions of Article I, Section 10, of the Constitution of the United States, which prohibits any state from making anything but gold and silver coin a legal tender in payment of debts.

Our position on this point is that the Act of Congress authorizes and imposes the duty upon the Federal Reserve Bank to receive for collection, and thus to collect, checks and drafts payable upon presentation in its district, which necessarily includes checks and drafts drawn upon state banks and trust companies in North Carolina. Such checks and drafts are by their terms payable in dollars, which obviously means lawful money of the United States. The Legislature of North Carolina, by Section 2 of the Act of February 5, 1921, undertakes to declare that when any such check is presented by or through the Federal Reserve Bank, post-office or express company, or any agent thereof, such check shall unless specified on the face thereof to the contrary by the maker be "*payable at the option of the drawee bank in exchange* drawn on the reserve deposits of said drawee bank." (Italics ours.) The Act of Congress also prohibits any charge against the Federal Reserve Bank for the payment of checks and remission therefor by exchange or otherwise, and thus prohibits the Federal Reserve Bank from accepting or allowing any such charge. Section 1 of the Act of the Legislature of North Carolina seeks to authorize state banks and trust companies in that state to deduct one-eighth of one per cent as an exchange charge for remittances covering checks; and Section 5 of the Act prohibits any protest for non-payment of any check drawn on any bank or trust company chartered by that State, when payment is refused

by the drawee bank, solely on account of the failure or refusal of the owner or holder thereof to pay exchange authorized by the Act, and provides that no right of action shall lie on such check on account of such refusal to pay the same. The effect of these provisions of the state statute, if valid, is to authorize state banks to tender, and to force the Federal Reserve Bank to accept *in payment* of any check which it may receive for collection on the state banks and trust companies of North Carolina exchange drafts drawn on reserve deposits of the drawee bank, instead of lawful money of the United States. It is our position that this legislation constitutes a clear effort on the part of the state to make checks which by their terms are payable in lawful money payable in something else than lawful money, and thus to make something other than gold and silver coin a tender in the payment of debts. Obviously if the debt can be paid or discharged with an exchange check, the tender of an exchange check is a valid tender for the payment thereof.

The conflict between the provision of the Constitution of the United States and the statute in question would seem to be clear from an examination of the pertinent provisions of the two instruments.

Article I, Section 10 of the Constitution of the United States provides:

> "No state shall * * * make anything but gold or silver coin a tender in payment of debts."

Section 2 of the Act of the Legislature of North Carolina provides that unless otherwise specified on the face thereof a check, which is an order for the payment of lawful money of the United States, shall

> "be payable at the option of the drawee bank in exchange drawn on the reserve deposits of said drawee banks."

The provisions are directly in conflict both in language and intent.

The bill of complaint in this case (Rec., p. 6) avers the right of the complainant banks to pay checks drawn on them and presented through the Federal Reserve Bank, with exchange drafts instead of lawful money, and the prayer of the complainant is that the Federal Reserve Bank be permanently restrained and enjoined

> "from carrying out its threat to refuse to accept exchange drawn by the plaintiffs on their reserve deposits *in payment of checks presented*, and to return such checks to the drawers thereof dishonoured because the plaintiffs *have refused to pay same in cash* and have *tendered* the exchange allowed by the laws of the State of North Carolina." (Italics ours.)

It thus appears that the complainants have asserted the right to pay their checks, or tender in payment thereof exchange drafts in lieu of lawful money, and they are of course bound by this construction of the Act.

Our position on this point was sustained by the Supreme Court of North Carolina in the following brief statements in its opinion:

> "No act of this state can authorize the drawee bank to pay less than the face amount of the check drawn upon it by its depositor or to remit its check in payment or pay it other than in legal tender money.
>
> "It is true that the Federal Reserve Bank as holder of the check has no contract rights with the drawee bank until the check is presented, but as holder it can require payment of the face amount on the check in legal tender.
>
> "It is true it can not enforce payment of the face amount except by personal presentation of the check at the counter of the paying bank, but it has a right to refuse a check sent to it by the paying bank for less than the full face amount and to protest the check it has sent here for collection for non-payment."

A person having on deposit in a state bank or trust company in the State of North Carolina adequate funds in lawful money of the United States, issues a check payable in dollars upon presentation to the bank. The check is presented at the counter of the bank in due course of business through The Federal Reserve Bank of Richmond, Virginia, or the post office, or an express company. Under decisions of the Supreme Court a check payable in dollars may only be paid in lawful money of the United States. The Legislature of North Carolina undertakes to say that the bank can pay and discharge this check by giving therefor its exchange draft on deposits in another bank. It is difficult to see how it can be contended that this is anything but an effort on the part of the State of North Carolina to make something else than gold or silver—namely, a bank draft —"a tender in payment of debts" in direct violation of the provisions of the Constitution of the United States, and the bill of complaint asserts the right to "tender" such exchange in payment as the basis for the relief sought.

The history of this provision of the Constitution, which is a matter of common knowledge among all who are familiar with the early history of this country, emphasizes this conclusion, and the language of the provision itself is so clear that it is not open to discussion.

As we have already pointed out during the period of the Revolution and the years which followed prior to the adoption of the Constitution of the United States, the various states of the Union issued paper money in large amounts, and by legislation made the same legal tender in the payment of debts. This legislation, in the language of Mr. Justice Story, "prostrated all public credit and private morals." It was to avoid the continuance of this practice and to protect the credit and good faith of the several states and of the people thereof that the provisions of the Constitution prohibiting the

states from emitting bills of credit, passing any acts to impair the obligation of contracts or making anything but gold and silver legal tender in the payment of debts were adopted. For a full discussion of this subject and of the origin and intent of these provisions of the Constitution see the following authorities:

44 Federalist.
Hepburn v. *Griswold*, 8 Wall. 603.
Legal Tender Cases, 12 Wall. 457.
Legal Tender Cases, 110 U. S. 421.

See especially the dissenting opinion of Mr. Justice Field in the latter case, where the history of these provisions of the Constitution is fully revieved.

The language of this provision of the Constitution is so clear and its purpose was so well understood, that there are very few decisions of the courts bearing upon the same.

In only two cases can we find that the Supreme Court of the United States has been called upon to apply directly provisions of the Constitution.

In *Quinn* v. *Breedlov*, 2 How. 38, a marshal in the State of Mississippi accepted State Bank notes in discharge of an execution levied upon the property of the debtor. The creditor insisted upon payment in lawful money of the United States. In disposing of this claim the Supreme Court, after determining that by the Constitution of the United States gold or silver coin only could be tendered in the payment of debts, held that the marshal having received bank notes in satisfaction of the execution and having made his return thereon could only

> "pay into court gold or silver, if required by the execution creditor to do so, and, therefore he ran the risk of converting the notes into specie when he took them; and having incurred the risk the marshal must bear the loss by depreciation."

Again in the case of *Griffin* v. *Thompson*, 2 How. 244, the court held that a marshal had no right to receive in satisfaction of a judgment bank notes in general circulation, and that if he did receive such papers, and the plaintiff refused to accept the same, the court would not order the execution satisfied.

The case of *Lowry* v. *McGhee &c.*, 16 Tenn. 242, is one of the few decisions by state courts in which this provision of the Constitution has been discussed. In that case the statute authorized the redemption of lands within two years by the repayment of money which the purchaser had paid at the sale under execution. An Act of 1819 authorizing the payment of bank notes in discharge of execution was held to be unconstitutional, and the Supreme Court of Tennessee held that under the Act of 1820 authorizing the redemption of lands payment could only be made in gold and silver coin which alone could be legal tender under the constitution of the United States. Although the two statutes undertook to authorize the person redeeming to pay in bank notes the court held that the Legislature in Tennessee had no authority to do so, and that the redemption could only be made in legal tender money.

See also

Gaines v. *Reeves*, 8 Ark. 221.
State v. *Beackmo*, 8 Black (Ind.) 250.

It is submitted that in the light of the principles and authorities above set forth, and the express language of Section 10 of the Constitution of the United States, the Act of the Legislature of North Carolina which seeks to authorize the state banks and trust companies of that state to tender in payment of and to pay checks presented through the defendant, the Federal Reserve Bank, or any post office or express company in exchange of such drawee banks, although the check by its terms is

payable in dollars, is a clear violation of the Constitution of the United States, and is therefore wholly invalid, and that the Supreme Court of North Carolina was right in so holding.

2. *The positions of counsel for complainants, petitioners here, on this point considered.*

Counsel for petitioners (p. 29 *et seq.* of their opening brief) undertake to avoid the effect of this obvious conflict between the provisions of the Act of the State Legislature in North Carolina, and Article I, section 10 of the Federal Constitution, and the decision of the Supreme Court of North Carolina holding that such conflict exists, upon several grounds, which will be considered in their order.

(a) *The contention that the state can authorize the drawee bank to pay less than the face amount of the check drawn upon it by its depositor.*

This contention is not admitted. It presents a broad question of general law, a consideration of which we deem unnecessary in this case.

Assuming that the State Legislature can authorize a state bank to pay less than the face value of a check drawn upon it by a depositor payable in dollars for a fixed amount, and held by a third party, it cannot force this third party to accept less than the face amount of the check. The holder could refuse to accept a less amount, and while he might have no right of action against the bank, he would have a right of action against the drawer of the check and all intervening endorsers for the full amount for which the check was drawn. In order to perfect this right against the drawer and prior intervening endorsers, it would be necessary for the holder to present the check and upon refusal of the drawee bank to pay the full face amount thereof, to return the same as dishonoured, and assert his right

against the drawer and prior endorsers. This is what the defendant did in this case.

But regardless of the question of the power of the state to authorize the payment by the banks of a check for less than the amount thereof, which, as stated, we do not concede, there is certainly no power in the state to require the Federal Reserve Bank authorized by Congress to collect checks on banks in that state and prohibited by Act of Congress from allowing charges for exchange, to accept in payment of the check anything but lawful money, or to accept in lawful money a less amount than the face amount of the check or any deduction for exchange. If this could be done, a state statute could override a valid Act of Congress.

(b) *The contention that the state can provide, unless the depositor designates in the face of the check to the contrary, such check shall be payable between banks in the universal banking media, that is, a draft on the reserve deposits of the payee bank.*

This contention is clearly unsound. This will ap- from an analysis of the legal relationships of the parties, which is a matter of elementary law.

A depositor in a state bank of North Carolina issues his check for $1,000 payable to bearer, or to the order of some third person. This check may or may not pass into the hands of several endorsers. It comes into the hands of the Federal Reserve Bank or any other bank in due course for collection. The holder of the check has no contract relationship with and no right of action against the drawee bank. This of course is admitted. But the holder has a contract with the drawer and all prior intervening endorsers, to the effect that if the check be promply presented to the drawee bank and not paid such drawer and prior endorsers will make good the amount thereof. As a condition precedent to asserting this contract right, however, the holder must present the check

to the drawee bank. The drawee bank then has the option to accept the same or to refuse payment. If it accept the check it becomes obligated to the holder to pay the same in lawful money of the United States for the full amount thereof. If it refuses to pay the same or tenders in payment thereof anything but gold or silver coin or legal tender money, the drawer may refuse to accept such tender, since it is not legal tender, treat the illegal tender as refusal to pay, and notify prior endorsers and the drawer and demand reimbursement for the face amount thereof. If a legal tender be made, that is, gold or silver coin or legal tender money, it releases the drawer and prior endorsers from further obligation to the holder, and the holder must look to the bank.

It follows from a mere statement of these principles of law, which are elementary, that in order to discharge the drawer and prior endorsers from obligation to the holder there must be a legal tender by the bank within the meaning of the Constitution of the United States, and if such tender is not made the drawer and endorsers are not discharged and the check is dishonored, and the holder must protest for non-payment and give notice of dishonor in order to assert his right against prior endorsers or the drawer thereof.

The Constitution of the United States provides that no state can make anything but gold or silver coin legal tender in the payment of debts. It therefore follows that whatever may be the custom of the banks and the media of payment commonly used by them in discharging their balances, this custom cannot override the Constitution of the United States, nor can the state do so by Legislative Act. The holder of the check may at his own volition accept something other than legal tender in payment, but he cannot be made to do so as a matter of law by state statute or otherwise. His legal right is to present the check to the bank, demand payment in legal

tender money of the United States, and if payment in legal tender money be refused, to return the check and assert his rights against the drawer or prior endorsers. The state cannot by statute or otherwise change his legal right to demand legal tender money as defined by the Constitution and laws of the United States.

(c) *The contention of counsel that the debt of the bank is to the depositor and the Act of the Legislature does not seek to authorize the bank to discharge its obligation to the depositor in an exchange draft.*

The question of the rights of the depositor are not involved in this litigation. The Federal Reserve Bank is authorized by Act of Congress to receive and collect checks in due course drawn upon the state banks of North Carolina. When it does receive these checks for collection or otherwise it acquires certain legal rights and assumes certain contractual obligations with respect thereto. It is true, as we have stated, that as the holder of such check it has no contract right as against the drawee bank; but it does have a contract right against the drawer and intervening endorsers for the payment of the full amount of the check. In order to enforce this contract right it must present the check to the drawee bank for payment in accordance with its terms. If a legal tender be made by the drawee bank, the rights of the holder against the drawer and prior endorsers is lost. But the contract right of the holder against the drawer and prior endorsers cannot be lost or affected by the tender of an exchange draft, or anything else but legal tender money, nor can the holder be required under the Constitution of the United States to accept anything but legal tender money. It is not a question of right of the depositor, but a question of the right of the Federal Reserve Bank as a holder in due course of a check in process of collection.

(d) *The contention that the Act of the Legislature of North Carolina, being prospective in its operations, enters into and forms a part of the contract represented by every check drawn upon a state bank of North Carolina, and that every person or institution which accepts that check consents to the implied contract.*

The answer to this position is two-fold. In the first place we are not discussing the question of impairment of obligation of contract, which is not involved in this case. We are dealing with the question of legal tender The provisions of the Constitution of the United States with respect to legal tender apply as much to prospective contracts as to past contracts. The state can no more authorize a tender in payment of a future debt in anything which is not legal tender under the Constitution and laws of the United States than it can authorize such tender in payment of a past debt. The legal tender provision of the Constitution is universal, and applies to all obligations past and present. The bill of complaint in this case prays that the defendant may be permanently enjoined from refusing to accept exchange drafts drawn by complainants on their reserve deposits in payment of checks presented, and from returning checks to the drawers thereof dishonoured because the complainants have refused to pay the same in cash and have *tendered* the exchange allowed by the laws of the State of North Carolina. Our position is that the tender of anything but legal tender money in payment of the check is not a legal tender, and therefore is in legal effect a refusal to pay, which makes it necessary for the Federal Reserve Bank as holder in order to protect his contract rights against the drawer and prior endorsers, to return the same as dishonoured. It necessarily follows that the injunction prayed cannot be granted without holding that to be a legal tender which is not a legal tender under the Constitution of the United States, and therefore must be denied.

In the second place, it is submitted on this point that the provisions of this Act being entirely inconsistent with and in direct conflict with the express provisions of the contract embodied in the check cannot by fiction of law be construed to enter into the contract or operate as a rule for the construction thereof.

In support of their position on this point, counsel relied in the court below upon the cases of *Farmers Bank of Nashville v. Johnson King and Co.*, 134 Ga. 486, and *Commercial National Bank v. First National Bank*, 118 N. C. 783, and in their brief in this court they cite the latter case and seem to rely upon a line of cases to the same effect.

In each of the cases above referred to there was written across the face of the check a provision requiring its presentation through a certain bank, or prohibiting its presentation through certain other banks. The court sustains this limitation upon the agency through which the check could be presented when expressed on the face of the check, basing their decisions largely upon the authority of the English cases with respect to "Crossed Checks" or checks across the face of which was written the name of the bank through which the same should be presented for payment.

We admit that it is entirely legal for any person drawing a check upon his own bank deposit, in terms upon the face of the check to direct the bank through which the same shall be presented, and that where such express direction is contained on the face of the check, although it may affect its negotiability no action will lie against the drawee bank for refusal to pay the same unless presented in accordance with such direction.

But the individual making a contract or drawing a check may write provisions into that contract which the Legislature of a state cannot by implication place therein, especially where such implied meaning is in direct opposition to the language used by the contracting

parties. For instance, it would not be competent for the Legislature of a state to say by statute that any person entering into a contract to deliver 100 bushels of wheat meant thereby that he would deliver 100 bushels of oats, or could discharge his contract by the delivery of 100 bushels of wheat by making delivery of 100 bushels of oats. Such an act would be in effect a legislative declaration that the language used must be construed to mean something entirely different from its meaning in common use, and its general acceptation. The Legislature cannot under its admitted power to enact reasonable rules for the construction of contracts create presumptions which produce such conflicting results, and in effect deny to the individual the right ~~of~~ to contract in the English language.

A written instrument embodying the terms of an agreement between parties called a contract is merely evidence of the existing contract achieved through the meeting of the minds of the parties thereto. The state can undoubtedly establish reasonable rules for the interpretation of such instruments, and provide that certain language or certain acts raise a presumption of a certain intent, but the presumption must always be one which *will naturally flow from the language used or the acts done, and not one which is in conflict with or directly opposed to the natural and probable intent of the parties derived from such language or acts.*

Thus in *McFarland* v. *American Sugar Refining Co.*, 241 U. S. 79, the Legislature of Louisiana by statute undertook to declare that where a person paid a less price for sugar in Louisiana than he paid in any other state, such act should create a presumption that such purchaser was a party to a monopoly or conspiracy in restraint of trade. The Supreme Court of the United States in holding this act unconstitutional, said, at page 86:

"As to the presumptions, of course the Legislature may go a good way in raising one or in changing the burden of proof, but there are limits. It is essential that there shall be some rational connection between the fact proved and the other fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate."

Citing *Mobile &c. R. Co.* v. *Turnipseed*, 219 U. S. 35, 43.

The court therefore held that the presumption created by the statute of Louisiana had no relation in experience to the general facts, and therefore was an invalid exercise of legislative power and that the statute was void under the Constitution of the United States.

In the case of *Bailey* v. *State of Alabama*, 219 U. S. 219, there was a statute of Alabama which provided that where any person entered into a contract to render service or perform labor, and obtained money or other personal property from his employers, and without just cause and without refunding this money failed to perform such service, that the act of failure to perform the contract should be *prima facie* evidence of attempt to injure and defraud the employer. The Supreme Court in an elaborate opinion by Mr. Justice Hughes reviewed the law on this subject at great length, and after stating that it was within the general power of the Legislature to prescribe evidence and the effect of that evidence, says at p. 238:

"In the exercise of this power numerous statutes have been enacted providing that proof of one fact shall be *prima facie* evidence of the main fact in issue; and where the inference is not purely arbitrary and there is a rational relation between the two facts and the accused is not deprived of a proper opportunity to submit all the facts bearing upon the issue, it has been held that such facts do not violate the requirements of due process of law."

It is clear that under this decision the inference or presumption which can be established by legislative act from certain language used or facts proved must not be purely arbitrary but there must be a natural relation between the language or the facts and the inference or meaning sought to be drawn therefrom. The presumption or inference sought to be established must be one which will naturally flow from the language used or the fact proved.

In the case of *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, the court, in construing a state statute, raising a presumption from certain facts lays down the rule as follows:

> "Each state possesses the general power to prescribe the evidence which shall be received and the effect which shall be given to it in her own courts, and may exert this power by providing that proof of a particular fact, or of several taken collectively, shall be *prima facie* evidence of another fact. Many exertions of this power are shown in the legislation of the several states, and their validity, as against the present objection, has been uniformly recognized, *save where they have been found to be merely arbitrary mandates or to discriminate invidiously between different persons in substantially the same situation.*" (Italics ours.)

Further citation of authorities seems unnecessary to establish a proposition so elementary in itself. The power to contract is vested in the individual. The state can provide by statute for any reasonable interpretation or presumption from the act of the individual or from the language used in the written instrument which is an evidence of a contract, and where the state does so provide, within the limitation prescribed, the language of the law is to be taken as a part of the contract of the parties acting within the state. But this does not authorize the state to take from the individual the right to

make his own contract and exercise that right for him; or to provide by statute for any inference or presumption from his language or acts which is inconsistent therewith and inconsistent with the intent which the language in its ordinary acceptation clearly expressed.

Applying these principles to the case at bar, it follows that when a check is drawn by a depositor upon a state bank or trust company of North Carolina, calling for the payment of a certain amount in dollars, it is an order on the bank for the payment upon presentation of that amount in lawful money of the United States. The Legislature of the state cannot under the pretense of a rule of construction or otherwise make this instrument payable in anything but lawful money of the United States, or force the holder thereof to take less than the face amount of the check so drawn; nor can the Legislature under its authority to establish reasonable rules of interpretation give to language which thus has a fixed and definite meaning an interpretation or meaning entirely inconsistent therewith and contradictory thereof.

It is equally clear that the provisions of such a statute cannot by implication or otherwise be read into a contract executed outside of the State of North Carolina.

In the case of *Scudder* v. *Union National Bank*, 91 U. S. 406, this court says:

> "Matters bearing upon the execution, the interpretation and the validity of a contract are determined by the law of the place where the contract is made. Matters connected with its performance are regulated by the law prevailing at the place of performance. Matters respecting the remedy, such as the bringing of suits, admissibility of evidence, statutes of limitations, depend upon the laws of the state where the suit is brought."

It is a matter of elementary law that a negotiable instrument contains many contracts. The drawer of the bill makes one contract, and each endorser makes a

separate contract. Daniel on Negotiable Instruments, Sixth Edition, page 1633, commenting upon this principle, says:

> "The drawer of a bill undertakes that the drawee shall accept, and afterward pay the bill according to its tenor, at the place and domicile of the drawee, if it be drawn and accepted generally; at the place appointed for payment, if it be drawn and accepted payable at a different place from the place of domicile of the drawee. If this contract of the drawer be broken by the drawee, either by non-acceptance or non-payment, the drawer is liable for payment of the bill, not where the bill was to be paid by the drawee, but where he, the drawer, made his contract, with his interest, damages, and costs, *as the law of the country where he endorses.*"

In the light of the above stated principles, if a depositor in a North Carolina bank were to draw and deliver a check upon a North Carolina bank to the payee in New York, the contract between the drawer and the payee would be made in New York, and its construction must depend upon the law of New York, for the construction of negotiable instruments depends upon the law of the place of contract, although the manner of performance depends upon the law of the place of payment. By drawing the instrument in New York the drawer would undertake that if it were presented in North Carolina and was not paid, he would immediately upon due notice pay the amount of the check to the holder. It could not be said that these parties in New York in using the term "dollars" could mean anything except lawful money. If the payee should endorse the check either in New York or in some other state, he would by endorsing warrant to the Federal Reserve Bank or some other endorsee that if the instrument were duly presented and were not paid according to its tenor, he would immediately reimburse the holder. It could not be said that this

endorser or his endorsee had in mind any means of payment except lawful money. If this check be presented and payment in lawful money is refused, the holder is immediately entitled to enforce against the prior endorsers and the drawer the agreements which they made in the other State, ~~courts~~. If the injunction in this case had been sustained, the holder would have been restrained from enforcing this agreement with the drawer and prior endorsers, and by arbitrary power would be compelled to release the persons with whom he had contracted and to accept the obligation of the drawee bank, when his contract with the drawer and the prior endorsers had plainly been to the effect that he should receive money from the drawee bank or from them. Our opponents contend that the manner of performance, i. e., the medium of payment contemplated in a negotiable instrument, is always governed by the law of the place of payment. This is correct, but if we regard the statute of North Carolina as an effort to define the manner of payment, it is then clearly an effort to define a legal tender. If we regard it as an effort to establish a rule for the interpretation of contracts, it cannot apply to checks which circulate outside of the State of North Carolina, for the interpretation of the terms in such checks is not regulated by the law of North Carolina.

We, therefore, submit upon this point that the holder of every check who causes it to be presented to the drawee bank in North Carolina is entitled to receive lawful money from the drawee bank; or, if it is refused, is entitled to receive lawful money from the drawer and prior endorsers. If such holder, whether it be the Federal reserve bank in its own right or some other person, is enjoined from returning the check as dishonored when payment in cash is refused and enjoined from refusing an exchange draft when tendered in payment of a check upon a North Carolina state bank, this holder is by injunction required to accept in settlement of an obli-

gation payable in money something other than money, and that any effort of the Legislature to bring out such a result is, as it was held by the Supreme Court of North Carolina, a bare and open violation of the provisions of Section 10 of Article 1 of the Constitution of the United States, prohibiting any state from making anything a legal tender for debts except gold or silver.

For the reasons stated we submit that the decision of the Supreme Court of North Carolina on this point should be affirmed.

POINT IV.

That the Act of the Legislature of the State of North Carolina (Chapter 20, Public Laws 1921) upon which complainants rely, is invalid, in that it seeks to deny to defendant the equal protection of the laws and to deprive the defendant of liberty or property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

The discussion of this point involves the consideration of the two provisions of the Fourteenth Amendment relied upon, which will be considered separately.

(1) *The Act of the Legislature of North Carolina is invalid in that it seeks to deny to the defendant the equal protection of the laws.*

The defendant contends that the Act of February 5, 1921, undertakes to single out the defendant from other banking institutions by an arbitrary and unreasonable discrimination, and thus to deny to it that equal protection of the law guaranteed by the aforesaid amendment to the Federal Constitution.

The defendant is a corporation organized under Act of Congress, and as such is authorized to do business in all of the states of the Fifth Reserve District, including the State of North Carolina, and is in legal effect a corporation in each of the states in which it is authorized to operate. It is, therefore within the jurisdiction of North Carolina within the meaning of the Amendment.

Texas, etc. Ry. Co. v. *Arncut*, 92 S. W. 57.
In re Cushing's Estate, 82 N. Y. Sup. 795.

The Fourteenth Amendment applies to all persons within the jurisdiction of the state, and it is now settled law that "persons" as used in the Amendment includes private corporations.

Quimby v. *Pennsylvania*, 125 U. S. 181, 188.

Southern Ry. Co. v. *Green*, 216 U. S. 400, 412.
Gulf &c. Ry. Co. v. *Ellis*, 165 U. S. 150.
Atchison &c. Ry. Co. v. *Matthews*, 174 U. S. 104.

The question as to what is a denial of the equal protection of the laws within the meaning of the Fourteenth Amendment has been before this court in so many cases and applied by this court to so many varying states of fact that it is no longer open to discussion. It is only necessary to get clearly in mind the principles involved and the limitations thereof, and apply the same to the facts of the particular case.

The principle is well and briefly stated by Mr. Justice Day in the case of *Southern Railway Co.* v. *Green*, 216 U. S. 400, 412, where it is said:

> "The equal protection of the law means subject to equal laws applying to all in the same situation. If the plaintiff is a person within the jurisdiction of the State of Alabama, within the meaning of the Fourteenth Amendment, it is entitled to stand before the law upon equal terms, to enjoy the same rights as belong to and to bear the same burdens as are imposed upon other persons in like situation."

In the case of *Nashville &c. Ry. Co.* v. *Taylor*, 86 Fed. 168, after an exhaustive review of the authorities, the court said:

> "What must constitute a denial of equal protection of the laws will depend in this view in a large measure upon what rights have been conferred or protection extended under the Constitution and laws of the particular state in which the question arises. As the constitutions and laws of the states vary, the proposition that each case must to an extent depend upon its own facts is specially applicable to this class of cases. When the state itself undertakes to deal with its citizens by legislation it does so under certain limitations and it may not single out a class of citizens and subject that class to oppressive discrimination, specially in respect to those rights so

important as to be protected by constitutional guaranty."

In *Cotting* v. *Goddard*, 183 U. S. 79, 46 L. Ed. 92, the court in an opinion by Justice Brewer cites with approval the definition attempted or given by Cooley:

> "Every one has a right to demand that he be governed by general rules, and a special statute, which, without his consent, singles his case out from one to be regulated by different law from that which is applied in all similar cases, would not be legitimate legislation, but would be such an arbitrary mandate as is not within the province of free governments. Those who make the laws are to govern by promulgated, established laws not to be varied in particular cases, but to have one rule for rich and poor, for the favorite at court and the countryman at the plow. This is the maxim in Constitutional Law and by it we may test the authority and binding powers of legislative enactments."

In *Sunday Lake Iron Company* v. *Wakefield*, 247 U. S. 350, 62 L. Ed. 1154, the court, in an opinion by Justice McReynolds, says:

> "The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents."

See also the following authorities stating and illustrating this principle:

Barbier v. *Connelly*, 113 U. S. 27, 31;
Truax v. *Raich*, 239 U. S. 33;
Truax v. *Connelly*, 66 Law ed. U. S. Rep. 132;
Yick Wo v. *Hopkins*, 118 U. S. 356;
Smith v. *Texas*, 233 U. S. 630;
Gulf &c. Ry. Co. v. *Ellis*, 165 U. S. 150.
M. K. & T. R. R. Co. v. *Cade*, 233 U. S. 642;
Missouri v. *Louis*, 101 U. S. 22;

Atchison etc. R. R. Co. v. *Matthews,* 174 U. S. 96;
Cotting v. *Kansas City Stock Yards,* 183 U. S. 110;
Connelly v. *Union Sewer Pipe Co.,* 184 U. S. 540, 559;
Union Co. Nat. Bank v. *Ozan L. Co.,* 127 Fed. 212.

It is admitted, of course, that under the decisions of this Court construing this provision of the Fourteenth Amendment, it is competent for the states to make reasonable classifications of persons, and to legislate within the scope of its police power with respect to the classifications so made so long as such classifications have a reasonable basis in fact and experience, and there is no discrimination between the persons or corporations of the several classes so established. There have been so many decisions in which this branch of the subject has been considered and the principles applicable thereto applied, that we shall not undertake to cite or review them all, but shall refer the court to only some of the leading decisions, illustrating and applying this principle.

In the case of *Gulf &c. Ry. Co.* v. *Ellis,* 165 U. S. 150, this subject is discussed in an elaborate opinion by Mr. Justice Brewer. There was a statute of the State of Texas which provided that any person having a *bona fide* claim against a railway company for labor done, damages, overcharges, stock killed, &c., and the amount does not exceed $50, might present the same to a railroad agent and if the claim was not paid within thirty days he might immediately institute suit thereon, and if he recovered the amount claimed he should recover all costs and in addition thereto an attorney's fee not to exceed $10. The court held that this statute was unconstitutional in that it undertook to segregate railroad companies and enforce upon them conditions as to the payment of their debts which were not in force as against other debtors. In disposing of the question, the court, at p. 153, says:

"The Supreme Court of the state considered

it is presented to us for consideration. Considered as such, it is simply a statute imposing a penalty upon railroad corporations for a failure to pay certain debts. No individuals are thus punished, and no other corporations. The act singles out a certain class of debtors and punishes them when for like delinquencies it punishes no others. They are not treated as other debtors, or equally with other litigants under like conditions and with like protection. If litigation terminates adversely to them, they are mulcted in the attorneys' fees of the successful plaintiff; if it terminates in their favor they recover no attorney's fees. It is no sufficient answer to say that they are punished only when adjudged to be in the wrong. They do not enter the courts upon equal terms. They must pay attorney's fees if wrong; they do not recover any if right; while their adversaries recover if right and pay nothing if wrong. In the suits, therefore, to which they are parties they are discriminated against, and are not treated as others. They do not stand equal before the law. They do not receive its equal protection. All this is obvious from a mere inspection of the statute.

"It is true the amount of the attorney's fee which may be charged is small, but if the state has the power to thus mulct them in a small amount it has equal power to do so in a larger sum. The matter of amount does not determine the question of right, and the party who has a legal right may insist upon it, if only a shilling be involved. As well said by Mr. Justice Bradley in *Boyd* v. *United States*, 116 U. S. 616, 635: 'Illegitimate and unconstitutional practices get their first footing in that way—namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the consti-

tutional rights of the citizens and against any stealthy encroachments thereon. Their motto should be *obsta principiis.*'

"While good faith and a knowledge of existing conditions on the part of a legislature is to be presumed, yet to carry that presumption to the extent of always holding that there must be some undisclosed and unknown reason for subjecting certain individuals or corporations to hostile and discriminating legislation is to make the protecting clauses of the Fourteenth Amendment a mere rope of sand, in no manner restraining state action."

And again at page 157 the court said:

"It is, of course, proper that every debtor should pay his debts, and there might be no impropriety in giving to every successful suitor attorney's fees. Such a provision would bear a reasonable relatio to the delinquency of the debtor and would certainly create no inequality of right or protection. But before a distinction can be made between debtors, and one be punished for a failure to pay his debts, while another is permitted to become in like manner delinquent without any punishment, there must be some difference in the obligation to pay, some reason why the duty of payment is more imperative in the one instance than in the other."

In the case of *Atchison, &c., Ry. Co.* vs. *Matthews*, 174 U. S. 96, the court was again called upon to consider this subject with reference to a statute of the State of Kansas, providing for recovery in action for damages by fire set out by the railroad company and allowing a reasonable attorney's fees where the recovery was had. In an opinion by Mr. Justice Brewer, the court again views the principles and authorities involved at great length, and sustains the validity of the statute, distinguishing the case from that of *Gulf, &c., R. R. Co.* v. *Ellis, supra*, upon the ground that whereas the statute held invalid in the Ellis case undertook to impose attorney's fee by way of penalty for the payment of railway debts, which penalty was not applied to other persons owing similar debts, in this case the penalty was applied for the

negligence of the railroad company in setting out the fire, and therefore the basis of classification was legitimate, since the railway company being engaged in a peculiarly hazardous business and the classification prescribed in the statute applied to all those engaged in this business, it constituted a legitimate business for such classification. In explaining the principles applicable to such cases and the distinction there applied by the court, the Supreme Court, pp. 104 and 105, after laying down the principle that the Legislature of a state will not be lightly held to be one transcending its power, says:

> "On the other hand, it is also true that the equal protection guaranteed by the Constitution forbids the legislature to select a person, natural or artificial, and impose upon him or it burdens and liabilities which are not cast upon others similarly situated. It cannot pick out one individual, or one corporation, and enact that whenever he or it is sued the judgment shall be for double damages, or subject to an attorney fee in favor of the plaintiff, when no other individual or corporation is subjected to the same rule. Neither can it make a classification of individuals or corporations which is purely arbitrary, and impose upon such class special burdens and liabilities. Even where the selection is not obviously unreasonable and arbitrary, if the discrimination is based upon matters which have no relation to the object sought to be accomplished, the same conclusion of the unconstitutionality is affirmed. *Yick Wo* vs. *Hopkins, supra*, forcibly illustrates this. In that case a municipal ordinance of San Francisco, designed to prevent the Chinese from carrying on the laundry business was adjudged void. This court looked beyond the mere letter of the ordinance to the conditions of things as they existed in San Francisco, and saw that under the guise of regulation an arbitrary classification was intended and accomplished."

In the case of *Southern Ry. Co.* v. *Green*, 216 U. S. 400, the Legislature of Alabama undertook to impose a special franchise tax on foreign corporations doing busi-

ness in that state which was not imposed on domestic corporations. The Supreme Court held this statute to be unconstitutional as a violation of the equal protection of the laws of the Fourteenth Amendment. We have already quoted from this case language pertinent to the point under discussion, and the review of the authorities in the opinion by Mr. Justice Day is most instructive as to the principles which guide the court in dealing with statutes of this character.

In the case of *Smith* v. *Texas*, 233 U. S. 630, there was a statute of Texas which provided that no person could be employed as a conductor on a passenger train who had not served two years as a brakeman or conductor of a freight train, and prescribing other qualifications for employment. The court held that this statute was invalid as constituting a purely arbitrary basis of classification, and as denying to all persons however competent, who had not rendered this particular service the right to employment in this line of business. In the opinion by Mr. Justice Lamar the right of the state to prescribe qualifications for employment in business of this character in the exercise of its police power was recognized, but in concluding the discussion, at p. 641, the court says:

> "3. So that the case distinctly raises the question as to whether a statute, in permitting certain competent men to serve, can lay down a test which absolutely prohibits other competent men from entering the same private employment. It would seem that to ask the question is to answer it—and the answer in no way denies the right of the state to require examinations to test the fitness and capacity of brakemen, firemen, engineers and conductors to enter upon a service fraught with so much of risk to themselves and to the public. But all men are entitled to the equal protection of the law in their right to work for the support of themselves and families. A statute which permits the brakeman to act—because he is presumptively competent—and prohibits the employment of engineers and all

others who can affirmatively prove that they are likewise competent, is not confined to securing the public safety, but denies to many the liberty of contract granted to brakemen and operates to establish rules of promotion in a private employment."

The case of *Missouri, &c., Ry. Co.* v. *Cade*, 233 U. S. 642, involved the construction and the validity of a statute of the State of Texas providing for allowing all attorney's fees in cases of recovery for services rendered, material furnished and other similar charges against any person or corporation doing business in the State. It will be observed that this statute was only a modification of the statute held unconstitutional in the case of *Railroad Company* v. *Ellis, supra*. In that case the statute was limited to claims against railroad companies. In this case the statute is applied to *all persons* having claims of the character listed therein. The appellant relies upon the Ellis case. The court in reviewing the Ellis case said that the former statute was held invalid in that it singled out a particular class of debtors, and imposed the burden upon them without any reasonable ground existing for the discrimination. "The classification was held to be arbitrary because having no relation to the special privileges granted to this class of corporations or to the peculiar feature of their business."

The court, in holding the statute under review to be valid, at p. 649, said:

> "The present statute, however, differs in essential features. It applies to claims 'against any person or corporation doing business in this state, for personal services rendered or for labor done, or for material furnished, or for overcharges on freight or express, or for any claim for lost or damaged freight, or for stock killed or injured by such person or corporation, its agents or employes.' There is here no classification of debtors; the act bears equally against individuals and against corporations of any class doing business in the state. It applies only to certain kinds of claims; but these cover a wide range, and do not appear to have been

grouped together for the purpose of bearing against any class or classes of citizens or corporations. Unless something of this sort did appear, we should not be justified in holding the act to be repugnant to the Fourteenth Amendment."

In the recent case of *Chicago &c. Ry. Co.* v. *Nye Schneider Fowler Co.*, decided at this term (Advance Sheets Dec. 1, 1922, p. 46), this court, in an opinion by Mr. Chief Justice Taft, after an extensive review of cases on this subject, said:

> "It is obvious that it is not practical to draw a line of distinction between these cases, based on a difference of particular limitations in the statute and the different facts in particular cases. The court has not intended to establish one, but only to follow the general rule that when, in their action and operation in the cases before it, such statutes work an arbitrary, unequal, and oppressive result for the carrier which shocks the sense of fairness the 14th Amendment was intended to satisfy in respect of state legislation, they will not be sustained."

Among other cases illustrating and applying this principle are the following:

Truax v. *Raich*, 239 U. S. 33;
Missouri Pacif. Ry. v. *Humes*, 115 U. S. 512;
Barbier v. *Connolly*, 113 U. S. 27;
Seaboard Air Line Ry. Co. v. *Seegers*, 207 U. S. 73;
Union Terminal Company v. *Turner Construction Co.*, 247 Fed. 727 (in which the Ellis and Cade cases are considered and distinguished).
Connolly v. *Union Sewer Pipe Co.*, 184 U. S. 540, 559.
Cotting v. *Kansas City Stock Yards Co.*, 183 U. S. 110;
Lindsley v. *Natural Carbonic Gas Co.*, 220 U. S. 61;
Fidelity, &c., Co. v. *Mettler*, 185 U. S. 325;
Truax v. *Connelly*, 66 Law Ed. U. S. Rep. 132.

Applying the principles and rules of distinction as to classification under this amendment stated and illustrated in the authorities cited, it would seem obvious that

the statute of North Carolina now under consideration violates the constitutional provision, in that it seeks to deny to the defendant the exercise of the rights accorded to other similar corporations, and to segregate the defendant into a class alone and impose upon it the burdens not imposed upon other persons and corporations.

Taking the statute as a whole, its obvious and admitted purpose is to deny to the defendant the right to collect checks drawn upon the state banks and trust companies of North Carolina when the same are presented by the defendant at the counter of the bank or through the mails or through an express company, while other banking institutions engaged in the collection of checks are permitted to make such collections without being subject to the limitation prescribed by this Act.

There is no sound or reasonable basis in fact or experience for classifying the defendant or a postoffice or express company with respect to the *business of collection of checks* in a classification different from any other person or corporation engaged in this business. The duty of a bank is to pay the check of its depositor in cash when presented at its counter. It is a matter of no consequence to the bank by whom such check is presented, so long as the person presenting the same is the lawful holder in due course and entitled to receive the proceeds thereof either as holder of such check or as his agent. It can make absolutely no difference in fact to the drawee bank whether the check be presented for payment at the counter by a local merchant, a local banking institution or the Federal Reserve Bank. All the drawee bank has to do is to pay the check in cash or decline to pay it, and this duty or right is the same, it matters not by whom it is presented.

Notwithstanding this fact, this statute undertakes to place the Federal Reserve Bank in a separate and distinct class and to impose upon it certain restrictions and limitations not imposed on anyone else presenting checks for collection. Since neither the postoffice nor

express companies are engaged in the business of collecting checks to any extent, it is obvious that the purpose of including them in the statute was to prevent The Federal Reserve Bank from presenting checks through these agencies instead of directly and thus to make effective the effort to put that institution in a class separate and distinct from all other persons collecting checks.

Since by the Federal law the Federal Reserve Bank is prohibited from paying exchange and the statute undertakes to give to the state banks the right to refuse payment of a check unless exchange is allowed for remittance, it in effect undertakes to deny to the Federal Reserve Bank the right to collect checks in cash. But the Act goes further, and not only denies to the Federal Reserve Bank the right to collect checks in cash, which right is accorded to all persons and institutions, but it expressly provides that where the check is presented by the Federal Reserve Bank or its agent, then it may be payable not in cash as called for by its terms, but in exchange drawn on the reserve deposits of the drawee bank. If this statute be valid, any person or banking institution within or without the State of North Carolina who holds a check on one of the plaintiff banks may present the same and collect cash, but if it is presented through the Federal Reserve Bank, the drawee is given the right to tender in payment another check instead of lawful money of the United States. This is clearly a direct effort to discriminate against the Federal Reserve Bank in the collection of checks on the banks of North Carolina both as to the right of collection and as to the medium in which the same will be paid.

What possible basis is there to sustain such a discrimination or classification with respect to the collection of checks? It is admitted that in other departments of its business the Federal Reserve Bank is different in some particulars from other banking institutions. It is admitted that it has powers which other banking institutions have not. But in the daily business of collecting checks its duties and obligations are exactly the same as

those of other persons or corporations engaged in the same business, or who may have checks for collection. The dictinctions laid down in the cases of *Railroad Company* v. *Ellis; Railway Co.* v. *Cade; Atchison, &c., Ry.* v. *Matthews*, and other cases cited *supra*, are directly applicable. In these cases it was held that a statute which imposed an attorney's fee upon railways and not upon other debtors as a penalty for the failure to pay a debt for labor done or material furnished was a discrimination against railway companies and invalid; while a statute which imposed a similar attorney's fee upon *all persons* for failure to pay debts of the classes named was valid. The Supreme Court held that there was no logical basis for a discrimination in the matter of payment of debts between railway companies and any other debtor, but it also held that there was a basis for a discrimination in matters relating to the setting out of fires, fencing of tracks and similar transactions of the railway company as to which it was engaged in a specially hazardous business and was by fact and experience in a different position from the ordinary citizens of the community.

In the same manner, there may be some basis for difference between ordinary banking institutions or individuals and the Federal Reserve Bank with respect to certain of its powers, duties or actions, but as to the manner of collecting checks, it is merely the holder of an obligation representing a debt which the debtor has promised shall be paid by the bank if that obligation is duly presented, and there is no distinction between the obligation itself or the rights or duties of the drawee bank which can be based upon the fact of its being presented through the Federal Reserve Bank or any other person, corporation, or institution engaged in the collection of checks any more than there is a just basis for distinction between debtors owing money for labor done or material furnished.

It is submitted, therefore, that under the decisions of this Court cited above, and the principles therein laid down, there is no just and reasonable basis for the dis-

crimination in this matter against the defendant, the Federal Reserve Bank, or for a classification of the defendant in a class different from other persons, banks or institutions collecting checks; that the discrimination sought to be made by the Act of the Legislature of North Carolina is clearly unreasonable and arbitrary, and therefore in violation of the equal protection clause of the Constitution of the United States.

Counsel for petitioners have undertaken on page 27 of their opening brief in this Court to indicate certain grounds for the classification of Federal Reserve Banks in a class distinct from all other banking institutions engaged in the collection of checks. The several grounds indicated by them for this classification will be noted and considered briefly.

(1) *That the Act of Congress under which the Federal Reserve Banks are created places them in a class distinct from ordinary commercial banks.*

This is true in certain aspects of their business. They are fiscal agents of the government for the performance of certain public duties, and are vested with certain other powers and charged with certain other obligations which are not common to national banks or general commercial banking institutions. But in the *collection of checks*, which is the matter in controversy in this case, the Federal Reserve Banks occupy the same position and have the same legal rights as ordinary commercial banks or any other holder of a check, except that they are subject to the limitation that they cannot allow charges for exchange, which it is the right of every holder of a check to refuse to pay. In the discharge of these functions they are in direct competition with other banking institutions and engaged in a business which is common to all banks.

(2) *That on account of their great size they constitute a distinct class.*

Size is not a basis for classification under the 14th

Amendment. The size of these banks does not affect the principles applicable to their transaction of the business of the collection of checks in any manner whatever. They occupy exactly the same position as other commercial banks in transacting this business.

(3) *That they have undertaken the function of clearing houses.*

The clearance of checks of their depositors through the Federal Reserve Banks is merely an incident of the collection of checks and does not differ in any respect from similar transactions by commercial banks. Large national or commercial banks clear checks for their depositors and discharge this function in exactly the same manner as Federal Reserve Banks.

(4) *That by the "Par Clearance" campaign they had obtained a virtual monopoly of the clearance business.*

The so-called "Par Clearance" campaign was nothing whatever but notice to their customers and other banks that the Federal Reserve Banks were prepared under the Federal Law to collect checks. In giving this notice they advertised their facilities exactly as commercial banks advertise their facilities for the collection of checks and the transaction of banking business. If, by virtue of superior facilities, they can obtain in competition larger proportion of the business than certain other banks, this is no ground for classification of these banks in a class different from other banks engaged in the same business and employing the same methods.

(5) *That they are the only corporations in the United States engaged in a par clearance campaign.*

As we have stated, the "par clearance" campaign was nothing but notice to customers that they were prepared to collect checks. Every bank advertises its facilities in this respect, and the "par list" referred to in

this suit is nothing but a statement of the terms on which the Federal Reserve Bank can make such collections. Every commercial bank undertakes to secure business by offering favorable terms for collection, and is engaged in doing exactly the same thing as a Federal Reserve Bank.

(6) *That they were the only corporations threatening State banks with the evil of presenting their checks over the counter and demanding payment in cash.*

A check being an order for the payment of money upon presentation, the presentation thereof at the counter of the drawee bank is the primary and strictly legal method of collection. Every commercial or other bank engaged in the collection of checks does and is required to do the same thing unless by mutual arrangement some other method is followed for the convenience of the parties. The great weight of authority in this country is that it is the duty of a collecting bank as a holder of a check to have the check presented to the drawee bank through some other agency and not send it direct to the drawee bank, and this has been expressly held in the State of North Carolina.

See *Bank of Rocky Mount* v. *Floyd*, 142 N. C. 408.

The Federal Reserve Bank has been ready and willing to do what other commercial banks do for convenience, that is to enter into an agreement with the drawee state banks in North Carolina, complainants in this case, to accept remittance in payment of checks by satisfactory drafts on reserve deposits, if such remittance be made at par. But if the complainant banks are unwilling to make this voluntary agreement, then the Federal Reserve Bank in collecting these checks is only doing what every other bank under similar circumstances is required to do, and this constitutes no basis for discrimination or classification.

For the reasons stated, we submit that the Act of the

Legislature of North Carolina of February 5, 1921, is unconstitutional in that it seeks by arbitrary classification to place defendant, Federal Reserve Bank, in a class distinct from other banks engaged in the same business, and clearly denies to the defendant, Federal Reserve Bank, that equal protection of the laws guaranteed to it by the 14th Amendment to the Constitution of the United States.

2. *The Act of the Legislature of North Carolina is invalid, in that it seeks to deprive the defendant of liberty and property without due process of the law, in violation of the first section of the 14th Amendment of the Constitution of the United States.*

It is probable that no one provision of the Constitution of the United States with the possible exception of the Commerce Clause, has been the subject of so many decisions as the provision of the Fourteenth Amendment against depriving any person of life, liberty or property without due process of law. To undertake a review of the decision on this subject would involve the writing of a treatise on constitutional law.

The essential principles involved are comparatively simple. Under its police power every state may impose such reasonable limitations upon the exercise of liberty and the use and enjoyment of property as may be necessary in the protection of health, morals and welfare of its people; but this power on the part of the states is always subject to the limitations of the Constitution of the United States, and if, under color of the exercise of the police power, the state undertakes to deprive any person of life, liberty or property, or to arbitrarily restrain or limit the exercise of these fundamental rights, then the action of the state through whatever agency this result may be accomplished, will be held to be invalid as in violation of the constitutional provision. A reference to a few leading decisions in this Court con-

struing and applying this provision of the Constitution will be sufficient for the purpose of this case.

In the case of *Smith* v. *Texas*, 233 U. S. 630, the Supreme Court said:

> "1. Life, liberty, property and the equal protection of the law, grouped together in the Constitution, are so related that the deprivation of any one of those separate and independent rights may lessen or extinguish the value of the other three. In so far as a man is deprived of the right to labor his liberty is restricted, his capacity to earn wages and acquire property is lessened, and he is denied the protection which the law affords those who are permitted to work. Liberty means more than freedom from servitude, and the constitutional guarantee is an assurance that the citizen shall be protected in the right to use his powers of mind and body in any lawful calling."

The law is well settled that the terms "liberty" and "property" as used in this constitutional amendment embrace the right of contract as an element of liberty and a valuable property right, and the right to labor in any lawful employment, and both are under the protection of the constitutional provision.

In the case of *Allgeyer* v. *Louisiana*, 165 U. S. 578, the court was passing upon a statute of the State of Louisiana which undertook to prohibit any person from effecting insurance on property or marine insurance in the state in any company which had not complied with the laws of the state. A contract of marine insurance was effected in the State of New York, and notice of the completion of the contract was given by mail in the State of Louisiana. The court held the statute of Louisiana invalid as being in violation of the constitutional provision. In speaking of the term "liberty" as used in the Constitution, the court said:

"The liberty mentioned in that amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

In the case of *Lochner* v. *New York*, 198 U. S. 45, there was a statute in the State of New York which undertook to regulate the hours of labor in bakery. The court held that this statute was unconstitutional as an arbitrary invasion of the right of every citizen to sell and purchase labor. The court recognized the right of the state to establish reasonable regulations for the protection of the health of its citizens, but held that the Act in question was an arbitrary invasion of the constitutional rights of the citizens of New York. At p. 56 the court says:

"In every case that comes before this court, therefore, where legislation of this character is concerned, and where the protection of the Federal Constitution is sought, the question necessarily arises: Is this a fair, reasonable and appropriate exercise of the police power of the state, or is it an unreasonable, unnecessary and arbitrary interference with the right of the individual to his personal liberty or to enter into those contracts in relation to labor which may seem to him appropriate or necessary for the support of himself and his family? Of course, the liberty of contract relating to labor includes both parties to it. The one has as much right to purchase as the other to sell labor."

In *Coppage* v. *Kansas*, 236 U. S. 1, a statute of the

State of Kansas undertook to make it a misdemeanor for an employer to require an employee to agree not to become or remain a member of a labor union. The court held that this statute was invalid as an unwarranted invasion of the right of contract. After laying down the principle that when an appeal is made to the Supreme Court for the protection of rights under the Constitution, the decision depends not upon the form of the statute but upon its operation and effect as applied and enforced, the court, in an opinion by Mr. Justice Pitney, reviewed at length the rights of the states to regulate and control the life, liberty and property of their citizens under the police power, and holds that this right is always subject to the constitutional limitations which cannot be avoided or evaded. At p. 14 the court says:

> "The principle is fundamental and vital. Included in the right of personal liberty and the right of private property—partaking of the nature of each—is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional sense. The right is as essential to the laborer as to the capitalist, to the poor as to the rich; for the vast majority of persons have no other honest way to begin to acquire property, save by working for money."

Again at p. 17 the court after declaring that the provision of the Fourteenth Amendment recognizes liberty and property as coexistent human rights, and bars the states from any unwarranted interference with either, says:

> "And since a state may not strike them down directly it is clear that it may not do so indirectly,

as by declaring in effect that the public good requires the removal of those inequalities that are but the normal and inevitable result of their exercise, and then invoking the police power in order to remove the inequalities, without other object in view. The police power is broad, and not easily defined, but it cannot be given the wide scope that is here asserted for it, without in effect nullifying the constitutional guaranty."

See also in further illustration of these principles:

Miller v. *Wilson*, 236 U. S. 373;

Knoxville Iron Co. v. *Harberson*, 183 U. S. 22.

Lamb v. *Powder Co.*, 132 Fed. 439.

Adkins, et al., vs. *Children's Hospital*, decided April 9th, 1923.

These authorities are sufficient to establish and illustrate the essential principles for which we contend, and it is useless to weary the court with the citation of additional cases to be found throughout the reports, many of which are referred to in the opinion in the above cases. Summarizing the effect of these decisions, we submit that they establish beyond controversy the following propositions:

That life, liberty and property are so inter-related that the undue or arbitrary limitations of the one necessarily constitutes a limitation of all, and deprives the citizen of those inalienable rights protected by the Constitution of the United States.

That the right of contract and of labor or service is an essential part of the liberty safeguarded by the constitutional amendment.

That the right of contract, and the right to labor are in themselves property, and that any Act of the state which unduly limits these rights necessarily deprives the citizen of property.

It requires no citation of authority to establish the

proposition that the due process of law required by the Constitution is that orderly proceeding incident to the jurisprudence established in this country, and is not met by a mere legislative act.

The state is allowed a wide discretion in the exercise of its police power in imposing limitations upon the enjoyment of life, liberty and property for the protection of the health, morals and welfare of its citizens. But where the limitations imposed or the act depriving the citizen of these essential rights is not in any direct or reasonable way related to the protection of health, morals or the welfare of the people, then any act seeking arbitrarily to restrain the enjoyment of these rights is a violation of the constitutional amendment.

Applying these principles to the case at bar, it is clear that by Act of Congress the defendant, a federal corporation, has been authorized to engage in the business of the collection of checks payable upon presentation within its district, a business common to all banking institutions. The right to exercise this authority and to engage in this business is a valuable property right. While the Federal Reserve Bank has never made any charge for such collections, it has the right to do so under the law should the occasion arise when it would be desirable, and, therefore, to make this branch of its business an important source of revenue.

The exercise of this authority and the conduct of this business is subject to the limitation imposed by Congress, that it shall not pay any charge for exchange in the remission or payment of checks, which would be its legal right in the absence of statute.

In order to exercise this authority and to engage in this business it is essential that the Federal Reserve Bank for its protection shall have the right as other commercial banks to present checks coming into its possession for collection at the counter of the drawee bank and demand payment thereof in lawful money. In effect the

Act of the Legislature of North Carolina, if valid, prohibits the exercise of this fundamental legal right common to all persons into whose possession checks may come for collection, since it seeks to require the Federal Reserve Bank to accept in payment of such checks exchange drafts of the drawee banks, drawn on their reserve deposits, and the bill in this case seeks to enjoin the defendant from refusing to accept such exchange drafts in payment thereof. This is an effort to deny to the Federal Reserve Bank a valuable property right conferred by Congress, and to deprive the Federal Reserve Bank of this valuable property right in violation of the 14th Amendment to the Constitution of the United States.

But the Act, if valid, goes even further. As we have pointed out, and it is admitted, if the Act of the Legislature of North Carolina be valid, and the Federal Reserve Bank is compelled to accept exchange drafts in payment of checks, if it attempts to collect them at all, then the drawee bank and other state banks in North Carolina can defeat entirely the collection of the check by giving exchange drafts on other banks in North Carolina, which in turn would be payable in exchange drafts; and the Federal Reserve Bank would be unable therefore to obtain lawful money in payment of said checks. The effect of the statute, if valid, therefore, is to deny to the Federal Reserve Bank the right to collect checks on state banks of North Carolina, which right was expressly given it by the Act of Congress, and to deprive it of this valuable property right in violation of the Fourteenth Amendment to the Constitution of the United States. It is idle for the Federal Reserve Bank to have authority to receive checks for collection if the statute of North Carolina can deny to that bank the right to demand money in payment.

The Federal Reserve Bank is authorized to receive and collect checks on state banks of North Carolina, and

as an incident thereto to contract with those banks for the payment of such checks in the due course of business, so as to make its collection facilities attractive to its customers in competition with other banks, or in event of failure or refusal of the drawee banks to pay the checks upon presentation to have the same dishonored in order to protect its contract right against the drawers and endorsers of said checks. The Act of the State of North Carolina, if valid, deprives the Federal Reserve Bank of the right to contract with the drawee banks with respect to the collection or payment of checks, fixes the medium which the Federal Reserve Bank *must accept* as an exchange draft drawn on the reserve deposits of the drawee bank whether good or bad, and denies to the Federal Reserve Bank the right to protest the check for non-payment, if such non-payment was because of the refusal of the Federal Reserve Bank to allow exchange, which it is forbidden by Act of Congress to allow. The effect of the Act, if valid, therefore, is to deprive the Federal Reserve Bank of a valuable right and liberty of contract, in effect to deprive defendant bank of an important business which it cannot conduct under such limitations, and thus to deprive it of liberty and of property rights of great value, in violation of the 14th Amendment of the Constitution of the United States.

We submit, therefore, that the Act of the Legislature of North Carolina is invalid as being in violation of the 14th Amendment to the Constitution of the United States, in that it seeks to deprive the defendant of liberty or property without due process of law.

CONCLUSION.

For the reasons stated, we respectfully submit that the decision of the Supreme Court of North Carolina, holding the Act of the Legislature of North Carolina of February 5, 1921, invalid, reversing the decision of the

Superior Court of Union County, dissolving the injunction theretofore granted by that court in this cause and dismissing the complaint, is clearly right and should be affirmed.

Respectfully submitted,

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in so ruling.

Affirmed.

FARMERS AND MERCHANTS BANK OF MONROE, NORTH CAROLINA, ET AL. *v.* FEDERAL RESERVE BANK OF RICHMOND, VIRGINIA.

CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

No. 823. Argued April 30, May 1, 1923.—Decided June 11, 1923.

1. Many state banks, in satisfying checks drawn upon them by their depositors and sent through other banks for collection, were accustomed to remit by draft on their reserves elsewhere and to make a small charge, called exchange, deducted from the remittance. The Federal Reserve Board, and the federal reserve banks, being forbidden to pay exchange charges, but believing it their duty to accept checks on any bank for collection and to make par clearance and collection of checks universal throughout the United States, adopted the practice of causing checks drawn on state banks which refused par clearance to be presented to such banks at the counter for payment in cash. To protect North Carolina banks from serious loss of income which would ensue from this practice, both through reduction of exchange charges and through transference of income-producing assets to their vaults, the legislature of that State enacted, (Pub. Laws 1921, c. 20) that any check drawn

upon a local bank (other than checks in payment of obligations to the federal or state governments,) unless specified to the contrary on its face by the maker, should be payable, at the option of the drawee, in exchange drawn on the drawee's reserve deposits, when such check was presented by or through any federal reserve bank, postoffice, or express company, or their agents, and, further, that state banks might charge a fee, within specified limits, on remittances covering checks. *Held:*

(a) That the North Carolina Act does not violate the provision of the Federal Constitution, Art. I, § 10, cl. 1, which prohibits a State from making anything except gold and silver coin a tender in payment of debts. P. 659.

(b) That it does not deprive the respondent Federal Reserve Bank, without due process of law, of its right to engage in the business of collecting checks payable on presentation within its district, (which it claims it may make a source of revenue), nor of its liberty of contract, by compelling it to accept payment in drafts, good or bad, and so driving it from that branch of business. The statute is not to be construed as authorizing payment in bad drafts, and is an exercise of police power not offensive to the due process clause. P. 660.

(c) That it does not deprive the Federal Reserve Bank of equal protection of the laws, by obliging it to accept payment in drafts, while leaving other banks free to demand cash; since it was reasonable classification for the legislature to limit the regulation to the particular, existing condition sought to be remedied. P. 661.

(d) That it does not conflict with duties imposed by Congress on the Federal Reserve Board and the federal reserve banks. P. 662.

2. Neither § 13, nor any other provision of the Federal Reserve Act, imposes on reserve banks any obligation to receive for collection checks for which it is impossible to obtain payment except by incurring serious expense, as by presenting them by special messenger at a distant place. P. 662.

3. In declaring that reserve banks may receive checks on non-member banks "payable on presentation", the Federal Reserve Act, § 13, as amended, would seem to imply that the checks must be payable in cash, or in such funds as are deemed by the reserve bank an equivalent. P. 663.

4. The federal reserve legislation does not impose on the Federal Reserve Board or the federal reserve banks a duty to establish in the United States a universal system of par clearance and collection of checks. P. 664.

5. The contention that Congress imposed this duty is irreconcilable with the provision of the Hardwick Amendment to § 13 (Act of June 21, 1917, c. 32, § 4, 40 Stat. 232) allowing members and affiliated non-members to make a limited charge (except to federal reserve banks) for "payment of checks and . . . remission therefor by exchange or otherwise." P. 666.
6. The Hardwick Amendment in no way interferes with the right of a depositor in a non-affiliated state bank to agree with his bank that his checks in certain cases (unless otherwise indicated on their face) should be payable, at its option, by exchange. P. 667.

183 N. Car. 546, reversed.

CERTIORARI to a decree of the Supreme Court of North Carolina reversing a decree which perpetually enjoined the respondent Federal Reserve Bank from refusing to accept payment of checks on petitioner banks in exchange drafts, as permitted by a North Carolina statute, and from returning, as dishonored, checks for which payment had been tendered only in that way.

Mr. Alexander W. Smith and *Mr. John J. Parker*, with whom *Mr. Gillam Craig* was on the brief, for petitioners.

Mr. John W. Davis and *Mr. Henry W. Anderson*, with whom *Mr. M. G. Wallace, Mr. H. G. Connor, Jr.*, and *Mr. C. W. Tillett, Jr.*, were on the brief, for respondent.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

The Legislature of North Carolina provided by § 2 of c. 20, Public Laws of 1921, entitled "An Act to promote the solvency of state banks":

"That in order to prevent accumulation of unnecessary amounts of currency in the vaults of the banks and trust companies chartered by this State, all checks drawn on said banks and trust companies shall, unless specified on the face thereof to the contrary by the maker or makers thereof, be payable at the option of the drawee bank, in exchange drawn on the reserve deposits of said drawee

bank when any such check is presented by or through any Federal Reserve Bank, postoffice, or express company, or any respective agents thereof."

Section 1 authorizes banking institutions chartered by the State to charge a fee not in excess of one-eighth of one per cent. on remittances covering checks, the minimum fee on any remittance therefor to be ten cents. Section 4 exempts from the operation of §§ 1 and 2 all checks drawn in payment of obligations to the federal or the state government. Whether this statute conflicts with § 13 of the Federal Reserve Act (December 23, 1913, c. 6, 38 Stat. 251, 263; as amended September 7, 1916, c. 461, 39 Stat. 752; June 21, 1917, c. 32, § 4, 40 Stat. 232, 234) or otherwise with the Federal Constitution is the question for decision.

The legislation arose out of the effort of the Federal Reserve Board to introduce in the United States universal par clearance and collection of checks through federal reserve banks. See *American Bank & Trust Co.* v. *Federal Reserve Bank of Atlanta,* 256 U. S. 350. The Federal Reserve Bank of Richmond serves the Fifth Federal Reserve District which includes North Carolina. Upon the enactment of this statute the bank gave notice that it considered the legislation void under the Federal Constitution; that, when presenting checks to North Carolina state banks for payment over the counter, it would refuse to accept exchange drafts on reserve deposits as required by § 2; and that it would return as dishonored checks for which only exchange drafts had been tendered in payment. Some checks were returned thus dishonored; and to enjoin such action, this suit was brought in a court of the State by the Farmers and Merchants Bank of Monroe and eleven other state banks. Two hundred and seventy-one more joined later as plaintiffs. So far as appears, none of them was a member of the federal reserve system or was affiliated with it. The trial court granted a per-

petual injunction. The Supreme Court of the State reversed the decree, 183 N. Car. 546; and the case is here on writ of certiorari, 261 U. S. 610. Defendant admits that, if the North Carolina statute is constitutional, plaintiffs are entitled to an injunction.

To understand the occasion for the statute, its operation and its effect, the applicable banking practice must be considered.[1] Par clearance does not mean that the payee of a check who deposits it with his bank for collection will be credited in his account with the face of the check if it is collected. His bank may, despite par clearance, make a charge to him for its service in collecting the check from the drawee bank. It may make such a charge although both it and the drawee bank are members of the federal reserve system; and some third bank which aids in the process of collection may likewise make a charge for the service it renders. Such a collection charge may be made not only to member banks by member banks, national or state, but it may be made to member banks also by the federal reserve banks for the services which the latter render. The collection charge is expressly provided for in § 16 of the Federal Reserve Act (38 Stat. 268) which declares that:

"The Federal Reserve Board shall, by rule, fix the charges to be collected by the member banks from its patrons whose checks are cleared through the Federal reserve bank and the charge which may be imposed for the service of clearing or collection rendered by the Federal reserve bank."

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[1] See Annual Reports of the Federal Reserve Board, 1914, pp. 19, 20, 174; 1915, pp. 14-17; 1916, pp. 9-12; Regulation I, Series of 1916, p. 169; 1917, pp. 23, 24; Regulation J, Series of 1917, pp. 181-183; 1918, pp. 74-77; 204-206; 810, 811, 817, 821; 1919, pp. 40-44; 222-228; 1920, pp. 63-69; 1921, 68-73; 228-230; Letter from the Governor of the Federal Reserve Board of January 26, 1920, Senate Document No. 184, 66th Cong., 2d sess.; also "Par Clearance of Checks," by C. T. Murchison, 1 No. Car. Law Review 133.

Par clearance refers to a wholly different matter. It deals not with charges for collection, but with charges incident to paying. It deals with exchange. Formerly, checks, except where paid at the banking house over the counter, were customarily paid either through a clearing house or by remitting, to the bank in which they had been deposited for collection, a draft on the drawee's deposit in some reserve city. For the service rendered by the drawee bank in so remitting funds available for use at the place of the deposit of the check, it was formerly a common practice to make a small charge, called exchange, and to deduct the amount from the remittance. This charge of the drawee bank the Federal Reserve Board planned to eliminate and, in so doing, to concentrate in the twelve federal reserve banks the clearance of checks and the accumulation of the reserve balances used for that purpose. The Board began by efforts to induce the banks to adopt par clearance voluntarily.[3] The attempt was not successful. The Board then concluded to apply compulsion. Every national bank is necessarily a member of the federal reserve system; and every state bank with the requisite qualifications may become such. Over members the Board has large powers, as well as influence. The first step in the campaign of compulsion was taken in the summer of 1916, when the Board issued a regulation requiring every drawee bank which is a member of the federal reserve system to pay without deduction, all checks upon it presented through the mail by the federal reserve bank of the district. The operation of this requirement was at first limited in scope by the fact that the original act (§ 13) authorized the reserve banks to collect only those checks which were drawn on member banks and which were deposited by a member bank or another reserve

[3] See Report, Federal Reserve Board, 1915, pp. 14–17; *ibid*, 1916, pp. 9–11.

bank or the United States. Few of the many state banks had then elected to become members. In September, 1916, § 13 was amended so as to authorize a reserve bank to receive for collection from any member (including other reserve banks) also checks drawn upon non-member banks within its district. Thereby, the Federal Reserve Board was enabled to extend par clearance to a large proportion of all checks issued in the United States. But the regulation (J) then issued expressly provided that the federal reserve banks would receive from member banks, at par, only checks on those of the non-member banks whose checks could be collected by the federal reserve bank at par. It was recognized that non-members were left free to refuse assent to par clearance. By December 15, 1916, only 37 of the state banks within the United States, numbering about 20,000, had become members of the system; and only 8,065 of the state banks had assented to par clearance.

Reserve banks could not, under the then law, make collections for non-members. It was believed that if Congress would grant federal reserve banks permission to make collection also for non-members, the Board could offer to all banks inducements adequate to secure their consent to par clearance. A further amendment to § 13 was thereupon secured by Act of June 21, 1917, c. 32, § 4, 40 Stat. 232, 234, which provided, among other things, that federal reserve banks:

"Solely for the purposes of exchange or of collection, may receive from any nonmember bank . . . deposits of . . . checks . . . payable upon presentation . . .: *Provided,* Such nonmember bank . . . maintains with the Federal reserve bank of its district a balance sufficient to offset the items in transit held for its account by the Federal reserve bank."

To this provision, which embodied the legislation proposed by the Federal Reserve Board, there was added,

while in the Senate, another proviso, relating to the exchange charge, now known in a modified form as the Hardwick Amendment, which declares:

"That nothing in this or any other section of this Act shall be construed as prohibiting a member or nonmember bank from making reasonable charges, to be determined and regulated by the Federal Reserve Board, but in no case to exceed 10 cents per $100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection or payment of checks and drafts and remission therefor by exchange or otherwise; but no such charges shall be made against the Federal reserve banks."

Thus a federal reserve bank was authorized to receive for collection checks from non-members who maintained with it the prescribed balance; and strenuous efforts were then made to induce all state banks to so arrange. But the law did not compel state banks to do this. Many refused; and they continued to insist on making exchange charges. On March 21, 1918, the Attorney General, 31 Ops. Atty. Gen. 245, 251, advised the President:

"The Federal reserve act, however, does not command or compel these State banks to forego any right they may have under the State laws to make charges in connection with the payment of checks drawn upon them. The act merely offers the clearing and collection facilities of the Federal reserve banks upon specified conditions. If the State banks refuse to comply with the conditions by insisting upon making charges against the Federal reserve banks, the result will simply be, so far as the Federal Reserve Act is concerned, that since the Federal reserve banks can not pay these charges they can not clear or collect checks on banks demanding such payment from them."

The Federal Reserve Board and the federal reserve banks were thus advised that they were prohibited from

paying an exchange charge to any bank. But they believed that it was their duty to accept for collection any check on any bank; and that Congress had imposed upon them the duty of making par clearance and collection of checks universal in the United States. So they undertook to bring about acquiescence of the remaining state banks to the system of par clearance.[3] Some of the non-assenting state banks made stubborn resistance.[4] To overcome it the reserve banks held themselves out as prepared to collect at par also checks on the state banks which did not assent to par clearance. This they did by publishing a list of all banks from whom they undertook to collect at par, regardless of whether such banks had agreed to remit at par or not. This resulted in drawing to the federal reserve banks for collection the large volume of checks which theretofore had come to the drawee bank by mail from many sources and which had been paid by remittances drawn on the bank's balance in some reserve city. If a state bank persisted in refusal to remit at par, the reserve banks caused these checks to be presented, at the drawee bank, for payment in cash over the counter. The practice adopted by the reserve banks would, if pursued, necessarily subject country banks to serious loss of income. It would deprive them of their income from exchange charges; and it would re-

[3] North Carolina was placed on the par list on November 15, 1920. There were on January 1, 1921, in the United States, 30,523 banks, state and national. Of these 1,755 state banks had refused to enter the par list. About 250 of the banks so refusing were in North Carolina. During the year 1921 the number which refused to consent to par clearance increased to 2,353. Annual Report of Federal Reserve Board, 1921, p. 71.

[4] See *American Bank & Trust Co.* v. *Federal Reserve Bank of Atlanta, supra; Brookings State Bank* v. *Federal Reserve Bank of San Francisco,* 277 Fed. 430; 281 Fed. 222; *Farmers' & Merchants' Bank of Catlettsburg, Ky.* v. *Federal Reserve Bank of Cleveland,* 286 Fed. 610.

duce their income-producing assets by compelling them to keep in their vaults in cash a much larger part of their resources than theretofore. That such loss must result was admitted. That it might render the banks insolvent was clear. But the federal reserve banks insisted that no alternative was left open to them, since they had to collect the checks and were forbidden to pay exchange charges. The state banks denied that the federal reserve banks were obliged to accept these checks for collection; and insisted that federal reserve banks should refrain from accepting for collection checks on banks which did not assent to par clearance.

It was to protect its state banks from this threatened loss, which might disable them, that the legislature of North Carolina enacted the statute here in question.[5] It made no attempt to compel the federal reserve bank to pay an exchange charge. It made no attempt to compel a depositor to accept something other than cash in payment of a check drawn by him. It merely provided that, unless the drawer indicated by a notation on the face of the check that he required payment in cash, the drawee bank was at liberty to pay the check by exchange drawn on its reserve deposits. Thus the statute merely sought to remove (when the drawer acquiesced) the absolute requirement of the common law that a check presented at the bank's counter must be paid in cash. It gave the drawee bank the option to pay by exchange only in certain cases; namely, when the check was "presented by or through any Federal Reserve Bank, postoffice, or ex-

[5] Statutes similar in purpose were enacted in Alabama, Florida, Georgia, Louisiana, Mississippi, South Dakota and Tennessee. See Annual Report of Federal Reserve Board, 1921, p. 70; Alabama, Gen. & Loc. Acts, 1920, No. 35; Florida, Laws, 1921, c. 8532; Georgia, Laws, 1920, p. 107; Louisiana, Acts, 1920, No. 23; Mississippi, Laws, 1920, c. 183; South Dakota, Laws, 1921, c. 31; Tennessee, Pub. Acts, 1921, c. 37.

press company, or any respective agents thereof." The option was so limited, because the only purpose of the statute was to relieve state banks from the pressure which, by reason of the common-law requirement, federal reserve banks were in a position to exert and thus compel submission to par clearance. It was expected that depositors would coöperate with their banks and refrain from making the prescribed notation; and that when the reserve banks were no longer in a position to exert pressure by demanding payment in cash, they would cease to solicit, or to receive, for collection checks on non-assenting state banks. Thus, these would be enabled to earn exchange charges as theretofore. Such was the occasion for the statute and its purpose. Whether this legislative modification of the common-law rule which requires payment in cash violates the Federal Constitution is the question for decision. That it does is asserted on five grounds.

First. It is contended that in authorizing payment of checks by draft on reserve deposits § 2 violates the provision of Article I, § 10, cl. 1, of the Federal Constitution, which prohibits a State from making anything except gold and silver coin a tender in payment of debts. This claim is clearly unfounded. The debt of the bank is solely to the depositor. The statute does not authorize the bank to discharge its obligation to its depositor by an exchange draft. It merely provides that, unless the depositor in drawing the check specifies on its face to the contrary, he shall be deemed to have assented to payment by such a draft. There is nothing in the Federal Constitution which prohibits a depositor from consenting, when he draws a check, that payment may be made by a draft. And, as the statute is prospective in its operation, *Denny* v. *Bennett*, 128 U. S. 489; *Abilene National Bank* v. *Dolley*, 228 U. S. 1, 5, there is no constitutional obstacle to a State's providing that, in the absence of

dissent, consent shall be presumed. Laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as fully as if they had been expressly referred to or incorporated in its terms. This principle embraces alike those laws which affect its construction and those which affect its enforcement or discharge. See *Ogden* v. *Saunders,* 12 Wheat. 213, 231; *Von Hoffman* v. *Quincy,* 4 Wall. 535, 550. If, therefore, the provision of § 2 authorizing payment by exchange draft is otherwise valid, it is binding upon the drawer of the check. Since it binds the drawer, it binds the payee and every subsequent holder, whether he be a citizen of North Carolina or of some other State, and wherever the transfer of the check was made. *Brabston* v. *Gibson,* 9 How. 263. For the holder of a check has, in the absence of acceptance by the drawee bank, no independent right to require payment under the general law. *Bank of The Republic* v. *Millard,* 10 Wall. 152. He takes it subject to the construction and with rights conferred by the laws of North Carolina, the place of the bank's contract and of performance. *Pierce* v. *Indseth,* 106 U. S. 546. Compare *Rouquette* v. *Overmann,* L. R. 10 Q. B. 525.

Second. It is contended that § 2 violates the due process clause. The argument is that defendant is a federal corporation authorized to engage in the business of collecting checks payable upon presentation within the district, a business common to all banking institutions; that the right to engage in this branch of the business is a valuable property right; that while defendant has, in the past, not made any charge for such collections, it has the right to do so, and could make this branch of its business an important source of revenue; that to compel defendant to accept in payment of checks exchange drafts on reserve deposits, whether good or bad, deprives it of liberty of contract, and in effect of an important branch

of its business, since that of collecting checks cannot be conducted under such limitations. To this argument the answer is clear. The purpose of the statute, as its title declares, was to promote the solvency of state banks. We should, in the absence of controlling decision of the highest court of the State to the contrary, construe the statute not as authorizing payment in a "bad" draft, but as authorizing payment in such exchange drafts only as had customarily been used in remitting for checks. So construed the statute is merely an exercise of the police power, by which the banking business is regulated for the purpose of protecting the public, and promoting the general welfare. *Noble State Bank* v. *Haskell,* 219 U. S. 104, 575. The regulation here attempted is not so extreme as inherently to deny rights protected by the due process clause. Compare *Chicago, Burlington & Quincy R. R. Co.* v. *McGuire,* 219 U. S. 549, 567, 568; *Central Lumber Co.* v. *South Dakota,* 226 U. S. 157, 162. If the regulation exceeds the State's power to protect the public, it must be because some other provision of the Federal Constitution is violated by the means adopted or by the manner in which they are applied.

Third. It is contended that the statute is obnoxious to the equal protection clause. The argument is that the Federal Reserve Bank of Richmond is obliged to accept payment in exchange drafts, whereas other banks with whom it might conceivably compete may demand cash, except in those cases where they present the check through an express company or the postoffice. It is well settled that the legislature of a State may (in the absence of other controlling provisions) direct its police regulations against what it deems an existing evil, without covering the whole field of possible abuses. *Lindsley* v. *Natural Carbonic Gas Co.,* 220 U. S. 61, 81; *Missouri Pacific Ry. Co.* v. *Mackey,* 127 U. S. 205. If the legislature finds that a particular instrument of trade war is being used

against a policy which it deems wise to adopt, it may direct its legislation specifically and solely against that instrument. *Central Lumber Co.* v. *South Dakota, supra,* p. 160. If it finds that the instrument is used only under certain conditions, or by a particular class of concerns, it may limit its prohibition to the conditions and the concerns which it concludes alone menace what it deems the public welfare. The facts recited above disclose ample ground for the classification made by the legislature. Hence, there was no denial of equal protection of the law. There remains to consider whether § 2 exceeds the State's power, because Congress has imposed specifically upon federal reserve banks duties, the performance of which § 2 obstructs; and that in this way, it conflicts with the Federal Reserve Act. This is the ground on which the invalidity of the North Carolina act has been most strongly assailed.

Fourth. One contention is that § 2 conflicts with the Federal Reserve Act because it prevents the federal reserve banks from collecting checks of such state banks as do not acquiesce in the plan for par clearance. The argument rests on the assumption that the Federal Reserve Bank of Richmond is obliged to receive for collection any check upon any North Carolina state bank, if such check is payable upon presentation; and is obliged to collect the same at par without allowing deductions for exchange or other charge. But neither § 13, nor any other provision of the Federal Reserve Act, imposes upon reserve banks any obligation to receive checks for collection. The act merely confers authority to do so. The class of cases to which such authority applies was enlarged from time to time by Congress. But in each amendment, as in § 13, the words used were "may receive"—words of authorization merely. It is true that in statutes the word "may" is sometimes construed as "shall". But that is where the context, or the subject-matter, compels

such construction. *Supervisors* v. *United States*, 4 Wall. 435. Here it does not. This statute appears to have been drawn with great care. Throughout the act the distinction is clearly made between what the Board and the reserve banks "shall" do and what they "may" do.[6]

Moreover, even if it could be held that the reserve banks are ordinarily obliged to collect checks for authorized depositors, it is clear that they are not required to do so where the drawee has refused to remit except upon allowance of exchange charges which reserve banks are not permitted to pay. There is surely nothing in the act to indicate that reserve banks must undertake the collection of checks in cases where it is impossible to obtain payment except by incurring serious expense; as, in presenting checks by special messenger at a distant point. Furthermore, the checks which the act declares reserve banks may receive for collection are limited to those "payable on presentation." The expression would seem to imply that the checks must be payable either in cash or in such funds as are deemed by the reserve bank to be

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[6] In the original Federal Reserve Act (38 Stat. 251) "may" is used in §§ 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 21, 22, 24, 25, 26, 28. "Shall" is used in those sections and also in §§ 1, 6, 7, 20, 23, 27, 29. Thus: Sec. 2: "The Secretary . . . shall designate . . . cities to be known as Federal reserve cities, and shall divide the continental United States . . . into districts. . . . The districts . . . may be readjusted . . . Such districts shall be known as Federal reserve districts and may be designated by number"; Sec. 3: "Each Federal reserve bank shall establish branch banks within the Federal reserve district in which it is located and may do so in the district of any Federal reserve bank which may have been suspended"; Sec. 5: "outstanding capital stock shall be increased . . . as member banks increase their capital stock . . . and may be decreased as member banks reduce their capital stock . . . "; Sec. 13: " . . . may receive . . . deposits . . . may discount . . . shall at no time exceed"; Sec. 16: "Every Federal reserve bank shall maintain reserves . . . "; "Every Federal reserve bank shall receive on deposit."

an equivalent. A check payable at the option of the drawee by a draft on distant reserves would seem not to be within the limited class of checks referred to in the act. The argument for the Federal Reserve Bank is not helped by reference to the incidental power conferred by § 4. It is only "such incidental powers as shall be necessary to carry on the business of banking within the limitations prescribed by this [the Federal Reserve] Act" which are granted. No duty or right of the federal reserve bank to collect checks is obstructed by the North Carolina statute which merely gives to the drawee bank the right to pay in the customary exchange draft, where its depositor has, by the form used in drawing the check, consented that this be done.

Fifth. The further contention is made that § 2 conflicts with the Federal Reserve Act because it interferes with the duty of the Federal Reserve Board to establish in the United States a universal system of par clearance and collection of checks. Congress did not in terms confer upon the Federal Reserve Board or the federal reserve banks a duty to establish universal par clearance and collection of checks; and there is nothing in the original act or in any amendment from which such duty to compel its adoption may be inferred. The only sections which in any way deal either with clearance or collection are 13 and 16. In neither section is there any suggestion that the Reserve Board and the reserve banks shall become an agency for universal clearance. On the contrary § 16 strictly limits the scope of their clearance functions. It provides that the Federal Reserve Board: "may at its discretion exercise the functions of a clearing house for such Federal reserve banks . . . and may also require each such bank to exercise the functions of a clearing house for its member banks."

There is no reference whatever to "par" in § 13, eitner as originally enacted or as amended from time to time.

There is a reference to "par" in § 16; and it is so clear and explicit as to preclude a contention that it has any application to non-member banks; or to the ordinary process of check collection here involved. Section 16 (38 Stat. p. 268) declares:

"Every Federal reserve bank shall receive on deposit at par from member banks or from Federal reserve banks checks and drafts drawn upon any of its depositors, and when remitted by a Federal reserve bank, checks and drafts drawn by any depositor in any other Federal reserve bank or member bank upon funds to the credit of said depositor in said reserve bank or member bank. Nothing herein contained shall be construed as prohibiting a member bank from charging its actual expense incurred in collecting and remitting funds, or for exchange sold to its patrons."

The depositors in a federal reserve bank are the United States, other federal reserve banks, and member banks. It is checks on these depositors which are to be received by the federal reserve banks. These checks from these depositors the federal reserve banks must receive. And when received they must be taken at par. There is no mention of non-member banks in this section. When, in 1916, § 13 was amended to permit federal reserve banks to receive from member banks solely for collection other checks payable upon presentation within the district;—and when, in 1917, § 13 was again amended to permit such receipt solely for collection also from certain non-member banks—§ 16 was left in this respect unchanged. In other respects § 16 was amended both by the Act of 1916 and by the Act of 1917. The natural explanation of the omission to amend the provision in § 16 concerning clearance is that the section has no application to non-member banks,—even if affiliated.

Moreover, the contention that Congress has imposed upon the Board the duty of establishing universal par

clearance and collection of checks through the federal reserve banks is irreconcilable with the specific provision of the Hardwick Amendment which declares that even a member or an affiliated non-member may make a limited charge (except to federal reserve banks) for "payment of checks and . . . remission therefor by exchange or otherwise." The right to make a charge for payment of checks, thus regained by member and preserved to affiliated non-member banks, shows that it was not intended, or expected, that the federal reserve banks would become the universal agency for clearance of checks. For, since against these the final clause prohibited the making of any charge, then if the reserve banks were to become the universal agency for clearance, there would be no opportunity for any bank to make as against any bank a charge for the "payment of checks." The purpose of Congress in amending § 13 by the Act of 1917 was to enable the Board to offer to non-member banks the use of its facilities which it was hoped would prove a sufficient inducement to them to forego exchange charges; but to preserve in non-member banks the right to reject such offer;[7] and to protect the interests of member and affiliated non-member banks (in competition with the non-affiliated state banks) by allowing also those connected with the federal system to make a reasonable exchange charge to others than the reserve banks. The power of the Federal Reserve Board to establish par clearance was, thus, limited by the unrestricted right of unaffiliated non-member banks to make a charge for exchange and the restricted

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[7] The governor of the Federal Reserve Board stated in his letter to the Senate, January 26, 1920, Sen. Doc. 184, 66th Cong., 2d sess., p. 6: "That a relatively small number of non-member banks should not want to become members of the clearing system, or should not want to remit at par is, of course, their own concern, and the Federal Reserve Board and the Federal reserve banks have not and will not dispute their right to decline to do so."

right of members and affiliated non-members to make the charge therefor fixed as reasonable by the Federal Reserve Board. No bank could make such a charge against the federal reserve banks—because these were prohibited from paying any such charge. Member and non-member affiliated banks, because they were such, performed the service for the federal reserve banks without charge. Unaffiliated non-member banks were under no obligation to do so. Thus construed, full effect may be given to all clauses in the Hardwick Amendment as enacted. It in no way interferes with the right of a depositor in a non-affiliated state bank to agree with his bank that the checks which he might draw should (unless otherwise indicated on their face) be payable, at the option of the drawee, in exchange in certain cases.

The North Carolina statute here in question does not obstruct the performance of any duty imposed upon the Federal Reserve Board and the federal reserve banks. Nor does it interfere with the exercise of any power conferred upon either. It is therefore consistent with the Federal Reserve Act and with the Federal Constitution.

Reversed.

MR. JUSTICE VAN DEVANTER and MR. JUSTICE SUTHERLAND dissent.